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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 249. 39.

ALBERT H. WAITE, PETITIONER,

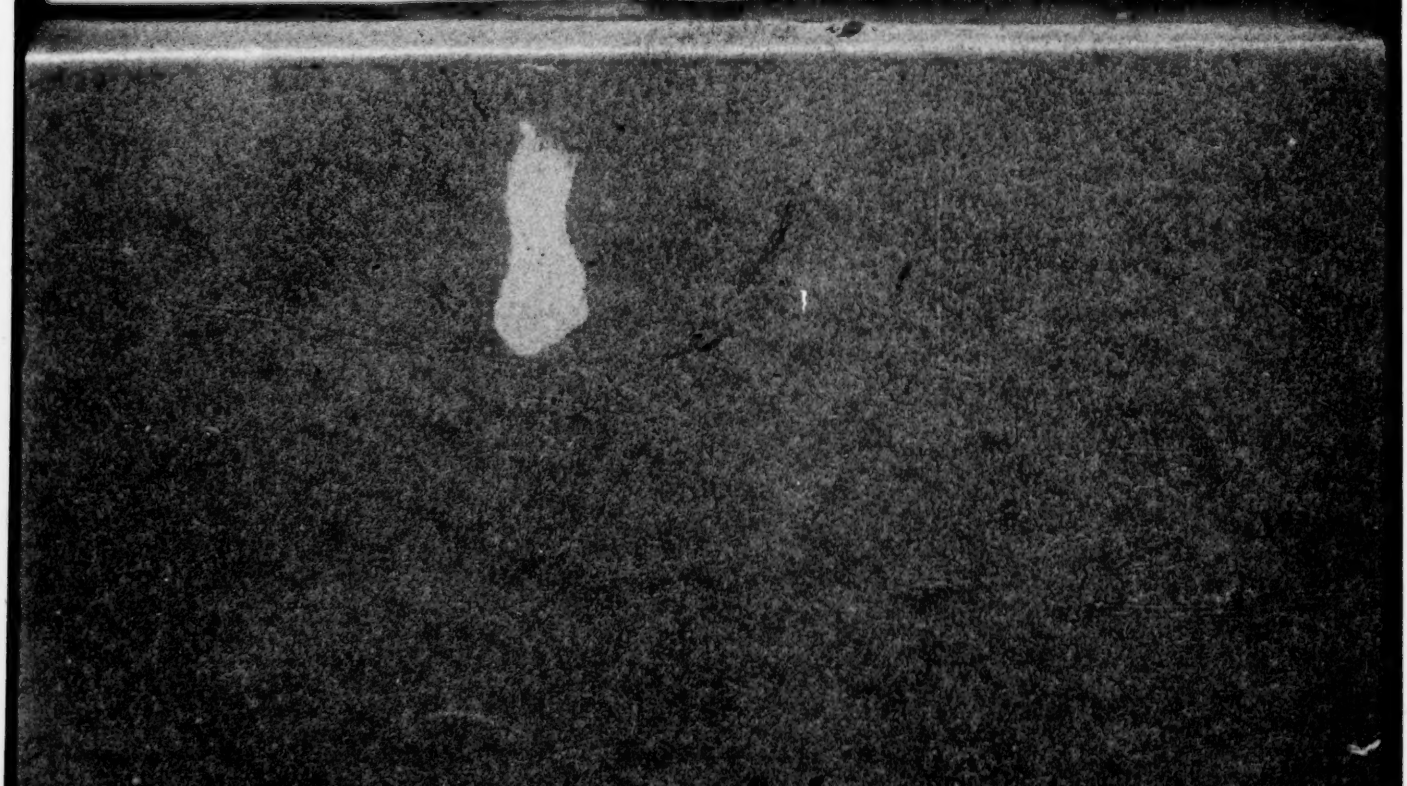
vs.

THE CITY OF SANTA CRUZ.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 11, 1900.
CERTIORARI AND RETURN FILED MAY 17, 1900.

(17,712.)



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1 In the United States Circuit Court in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
CITY OF SANTA CRUZ (a Corporation), Defendant.

Stipulation and Order as to Judgment-roll.

Whereas, the defendant in the above-entitled action is about to apply for a writ of error to the United States circuit court of appeals, from the judgment rendered herein, and is about to apply to the clerk of the above-entitled court for a transcript of the record herein, to be certified to and entered in said United States circuit court of appeals.

And, whereas, the judgment-roll contains the original complaint filed in this action, and the demurrer thereto, both of which documents have been entirely superseded by the subsequent pleadings, upon which said action was tried, namely: by the amended complaint of plaintiff, and the demurrer and answer to said amended complaint, filed by, and on behalf of, defendant.

And, whereas, said original complaint and the demurrer thereto are very voluminous, comprising about two thousand folios.

2 And, whereas, the cost of transcribing said original complaint and the demurrer thereto will involve a large and useless expense in prosecuting said writ of error.

And, whereas, said original complaint, and the demurrer thereto, will be wholly useless for any purpose in said United States circuit court of appeals.

It is therefore stipulated and agreed that said original complaint, and the answer thereto, be eliminated from the record, and from the transcript to be certified to said United States circuit court of appeals, and that the United States circuit court, or the judge who tried this cause, may make an order, based upon this stipulation, directing the clerk to eliminate said original complaint, and the demurrer thereto, from the transcript of the record to be certified and entered in said United States circuit court of appeals.

Dated December 7, 1898.

CHICKERING, THOMAS & GREGORY,
Attorneys for Plaintiff.

LINDSAY & CASSIN AND
JAMES G. MAGUIRE, *Attorneys for Defendant.*

3 In the United States Circuit Court in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
CITY OF SANTA CRUZ (a Corporation), Defendant.

Order as to Record.

Upon the annexed stipulation of the parties to the above-entitled cause, and it appearing to be just and proper, and expedient that the original complaint and demurrer filed herein (both of which have been entirely superseded by the subsequent pleadings of the parties upon which said cause was tried), should be eliminated and excluded from the record to be certified by the clerk of this court to the United States circuit court of appeals, upon defendant's application for a writ of error:

It is ordered and directed that the clerk of this court, transcribing and certifying the record of this cause to the United States circuit court of appeals, shall eliminate and omit from said record said original complaint and the demurrer thereto.

Dated December 7, 1898.

JOHN J. DE HAVEN, *Judge.*

(Endorsed:) Filed December 7, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

4 In the United States Circuit Court in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
CITY OF SANTA CRUZ (a Corporation), Defendant.

Stipulation Allowing Plaintiff to State Several Causes of Action in One Count.

It is hereby stipulated that the plaintiff in the above-entitled action may file an amended complaint, in which he may set forth several causes of action, if any such he have, without stating them separately, that is to say, that plaintiff may, in such amended complaint, or in any subsequent amended complaint permitted by the court, state in one count his causes of action, on all the bonds and coupons described in the original complaint now on file.

The provisions of the statute requiring the plaintiff, when uniting several causes of action, to state them separately, is waived in order to save both parties to the above-entitled action unnecessary labor and expense.

CHICKERING, THOMAS & GREGORY,
Attorneys for Plaintiff.
LINDSAY & CASSIN, *Attorneys for Defendant.*
JAMES G. MAGUIRE,
Of Counsel for Defendant.

(Endorsed:) Filed November 12, 1895. W. J. Costigan, clerk.

In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
CITY OF SANTA CRUZ (a Corporation), Defendant.

Amended Complaint.

Now comes the plaintiff, and filing this, his amended complaint, alleges:

That said plaintiff was, at all times hereinafter mentioned, and still is, a resident and citizen of the State of Massachusetts.

That said defendant was at all times hereinafter mentioned, and still is, a municipal corporation of the fifth class, duly organized and existing under and by virtue of a certain statute of the State of California, approved March 1, 1866, entitled "An act to incorporate the town of Santa Cruz," and also under and by virtue of a certain statute of the State of California, supplemental to the statute above mentioned, approved March 11, 1876, and entitled "An act to reincorporate the city of Santa Cruz."

That on and prior to the thirteenth day of March, 1894, the said defendant had an outstanding indebtedness in the sum of $360,000, evidenced by the bonds thereof, and on said date the assessed valuation of all the taxable real estate and personal property in said city was $3,907,404.00.

That on the day and year last aforesaid, the mayor and common council of the said city, pursuant to the provisions of an act of the legislature of the State of California, approved March 1, 1893, entitled "An act to amend an act entitled 'An act to authorize the common council, board of trustees, or other governing body, of any incorporated city or town other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same (approved March 15, 1883),'" submitted to the qualified electors of the said defendant corporation, at a special election duly called and held for that purpose, and called and held in the same manner in which other elections are held in such city, the question of refunding the said outstanding indebtedness of the said defendant, as then evidenced by the bonds thereof.

That the notice of such election recited the indebtedness to be refunded, together with the denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued.

That at such election on the thirteenth day of March, A. D. 1894, more than two-thirds of the qualified electors of the said defendant voted in favor of refunding the then outstanding indebtedness of the said defendant, as evidenced by the bonds thereof, and assented to the execution and issue of the bonds and coupons hereinafter set forth and particularly described.

That thereafter, to wit, on the twenty-sixth day of March, 1894, the said mayor and common council passed and adopted a certain ordinance for refunding its indebtedness, known and designated as "ordinance No. 220 of the common council of the city of Santa Cruz."

That all acts, conditions, or things required by law to be done precedent to the issue of the bonds and coupons hereinafter mentioned, were properly done and approved in legal and due form, as required by law.

That thereafter, to wit, on the sixteenth day of April, 1894, the said city of Santa Cruz, by its mayor and city clerk, thereunto duly authorized, executed three hundred and sixty bonds or obligations, in the sum of one thousand dollars each, in gold coin of the United States, bearing interest in like gold coin at the rate of five per cent. per annum, said interest being payable annually.

That said bonds were of the character known as serials, one-fortieth of the principal thereof, to wit, the sum of nine thousand dollars, being payable annually on the fifteenth day of April, together with the said annual interest on all outstanding bonds.

That said bonds were numbered consecutively from one to three hundred and sixty, both inclusive, and were divided into forty series, consisting of nine bonds each.

That the first series included the bonds numbered from one to nine, both inclusive, and each succeeding series included the nine bonds numbered consecutively after those included — the next preceding series.

8 That the bonds included in the first series were made payable on April 15, 1895, and the remaining series were made payable in consecutive order on the fifteenth day of April in each succeeding calendar year thereafter, until and including the year 1934.

That to each of said bonds were attached interest coupons equal in number to the number of years which the bond had to run before its maturity, executed by the defendant through its mayor and city clerk thereunto duly authorized.

That the nine bonds comprising the said first series were in the words and figures following, to wit:

"Number —. $1,000 *dollars.*

"UNITED STATES OF AMERICA, *State of California.*

"*Bond of the City of Santa Cruz—Refunding Gold Bond.*

"Five per cent. Series 1.

"The City of Santa Cruz, a municipal corporation, in the county of Santa Cruz, State of California, is indebted to, and promises to pay to the bearer, for value received, the sum of one thousand dollars ($1,000), gold coin of the United States, on the fifteenth day of April, A. D. 1895, with interest thereon, in like gold coin, at the rate of five (5) per cent. per annum, payable annually on the fifteenth day of April, of each calendar year from the date hereof, at

the office of the city treasurer of said city of Santa Cruz, on presentation and surrender of the proper interest-bearing coupon hereto attached.

"And for the payment of the principal sum herein named, and the interest accruing thereon, the said City of Santa Cruz is held and firmly bound, and its faith and credit, and all the real and personal property of said city, are hereby pledged for the prompt payment of this bond and interest at maturity.

"This bond is one of a series of bonds of like date, tenor, and effect, issued by the said city of Santa Cruz, for the purpose of refunding the bonded indebtedness of said city and issuing bonds therefor, and providing for the payment of the same under and in pursuance of and in conformity with, the provisions of an act of the legislature of the State of California, entitled 'An act to amend an act entitled "An act authorizing the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same" (approved March 15, 1883),' approved March 1, 1893.

"And in pursuance of and in conformity with the constitution of the State of California, and the ordinances of the city of Santa Cruz, and in pursuance of and in conformity with a vote of more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election duly and legally called and held and conducted in said city as provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published in the manner as required by law, and after the result of said election had been canvassed, found and declared in the manner and as required by law.

"And it is hereby certified and declared that all acts, conditions, and things required by law to be done precedent to and in the issue of said bonds, have been properly done, happened, and performed in legal and due form, as required by law. This bond ceases to bear interest when due, unless presented for payment.

"In testimony whereof, the said city of Santa Cruz, by its mayor and common council, has caused this bond to be signed by the mayor of said city of Santa Cruz, and attested by its said clerk, with the seal of said city attached, this sixteenth day of April, A. D. one thousand eight hundred and ninety-four.

"[SEAL.] WM. T. JETER,

"*Mayor of the City of Santa Cruz.*

"(Attest:) O. J. LINCOLN, *City Clerk.*

(Endorsed:) Number —. "State of California. The City of Santa Cruz. 1,000 dollars. Refunding five per cent. gold bond. $1,000. $1,000. Series 1. Interest payable annually April 15. Principal due April 15, 1895. (Surcharged on face of bond:) $1,000."

That the three hundred and fifty-one bonds comprising the other thirty-nine series were in the same words and figures, save and

except the number of the bond, and the date of the maturity thereof.

11 That the coupons maturing on April 15, 1895, attached to each of the three hundred and sixty bonds aforesaid, were in the words and figures following, to wit:

"$50. $50.

"The City of Santa Cruz will pay to bearer hereof, on the fifteenth day of April, 1895, at the office of the city treasurer of said city, fifty dollars, gold coin of the United States, for interest on refunding bond issued sixteenth day of April, A. D. 1894.

"No. —. WM. T. JETER,

"*Mayor of the City of Santa Cruz.*

"O. J. LINCOLN, *City Clerk.*

"(Surcharged *of* face of coupon:) 1."

That before the delivery of the said bonds and coupons as hereinafter alleged, the said defendant made provision for the collection of an annual tax sufficient to pay the interest on the same as it should fall due, and also provision to constitute a sinking fund for the payment of the principal thereof as it should fall due.

That said bonds and coupons were and are in the form described in the said notice of the special election of March 13, 1894.

That on or about the thirteenth day of April, 1894, the said defendant, by its officers thereunto duly authorized, for value received, delivered the said three hundred and sixty bonds, with the coupons thereunto attached, to one Walter Stanton, who afterwards, and before the maturity thereof, sold and delivered to the plaintiff

12 herein the nine bonds of the first series, numbered from one to nine, both inclusive, and two hundred and eighty-two of the coupons maturing on April 15, 1895.

That said coupons so sold and delivered were the coupons originally attached to and issued with the bonds bearing the following numbers, to wit:

Nos. 1 to 14 (both inclusive).
Nos. 21 to 63 (both inclusive).
Nos. 69 to 182 (both inclusive).
Nos. 184 to 188 (both inclusive).
Nos. 201 to 207 (both inclusive).
Nos. 233 to 243 (both inclusive).
Nos. 245 to 252 (both inclusive).
Nos. 276 to 288 (both inclusive).
Nos. 294 to 360 (both inclusive).

That the said plaintiff ever since has been and now is the lawful owner and holder of the said nine bonds and the said two hundred and eighty-two coupons.

That on the sixth day of May, 1895, said plaintiff presented for payment, at the office of the city treasurer of the said defendant, the nine bonds and the said two hundred and eighty-two coupons, offering to surrender said bonds and coupons upon payment of the same.

That the said city treasurer of the said defendant wholly refuses to pay said bonds, or the coupons so presented, or either or any of them, and still refuses to pay the same.

That no part of said bonds or of the interest due thereon has been paid, and that there is now due and unpaid to the plaintiff on said bonds and coupons the sum of twenty-three thousand
13 one hundred dollars in gold coin of the United States, with interest thereon from the said fifteenth day of April, 1895.

Wherefore, the said plaintiff prays judgment against the said defendant in the sum of twenty-three thousand one hundred dollars, gold coin of the United States, with interest thereon from the fifteenth day of April, 1895, and costs of suit.

CHICKERING, THOMAS & GREGORY AND
GERSTLE & SLOSS, *Attorneys for Plaintiff.*

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Marcus L. Gerstle, being first duly sworn, says: That he is one of the attorneys for the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, he believes it to be true; that the said plaintiff is without the city and county of San Francisco, State of California, where said affiant resides and has his office; that said affiant is familiar with the facts of the case; and for those reasons makes this affidavit on behalf of said plaintiff.

MARCUS L. GERSTLE.

Subscribed and sworn to before me this thirty-first day of October, 1895.

MILTON S. LATHAM,
Notary Public in and for the City and County of San Francisco, State of California.

14 (Endorsed:) Due service by copy of the within amended complaint this first day of November, A. D. 1895, is hereby admitted. Lindsay & Cassin, attorneys for defendant; James G. Maguire, of counsel for defendant.

(Endorsed:) Filed November 12, 1895. W. J. Costigan, clerk.

In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

ALBERT H. WAITE, Plaintiff, }
vs.
CITY OF SANTA CRUZ (a Corporation), Defendant. }

Demurrer to Amended Complaint.

Now comes the defendant in the above-entitled action, and demurs to plaintiff's amended complaint therein, and as grounds of demurrer states:

I.

1. That said complaint does not state facts sufficient to constitute a cause of action.

2. That the act under which it is alleged that the bonds or obligations mentioned in said complaint were executed is in conflict with the constitution of the State of California, and in conflict with the Constitution of the United States.

3. That said complaint is uncertain in this:

(*a.*) That while said complaint alleges "that all acts, conditions, and things required by law to be done precedent to the issue of the bonds and coupons hereinafter (in said complaint) mentioned, were properly done and approved in legal and due form as required by law," it does not appear therefrom what, if any, acts, conditions, or things required by law to be done precedent to the issue of the bonds or obligations therein mentioned, were or was done or approved prior to the issuance of such bonds or obligations, or any of them.

(*b.*) It does not appear therefrom whether or not the bonds therein mentioned were sold for not less than their face value in gold coin, as required by law.

Wherefore, defendant prays that plaintiff take nothing by this action, and that defendant be hence dismissed with its costs.

LINDSAY & CASSIN,
Attorneys for Defendant.

JAMES G. MAGUIRE,
E. R. TAYLOR, *Of Counsel.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

Nov. 16, 1895.

JAMES G. MAGUIRE, *Of Counsel.*

(Endorsed:) Due service by copy of the within demurrer is hereby admitted this eighteenth day of November, 1895. Chickering, Thomas & Gregory and Gerstle & Sloss, attorneys for plaintiff.

(Endorsed:) Filed Nov. 18, 1895. W. J. Costigan, clerk.

At a stated term, to wit, the July term, A. D. 1896, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Monday, the third day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Joseph McKenna, circuit judge.

ALBERT H. WAITE
vs.
CITY OF SANTA CRUZ. } No. 12094.

Order Overruling Demurrer to Amended Complaint.

The demurrer to amended complaint herein, heretofore heard and submitted, being now fully considered, and the opinion of the court

having been delivered, it is ordered that said demurrer be, and the same hereby is, overruled, with leave to defendant to answer within twenty days.

17 In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
CITY OF SANTA CRUZ (a Corporation), Defendant.

Answer.

Now comes the defendant, and for answer to the amended complaint of plaintiff on file herein:

I.

Denies that on or prior to the thirteenth day of March, 1894, defendant had an outstanding indebtedness in the sum of $360,000, or thereabouts, or in any sum or amount whatever in excess of $270,000, evidenced by the bonds or warrants thereof.

II.

Denies that on thirteenth day of March, 1894, or at any other time or at all, the mayor and common council of said city of Santa Cruz, pursuant to the provisions of an act of the legislature of the State of California, approved March 1, 1893, entitled "An act to amend an act entitled 'An act to authorize the common council, board of trustees, or other governing body of any incorporated city or town other than cities of the first class, to refund its indebt-
18 edness, issue bonds therefor, and provide for the payment of the same (approved March 15, 1893),'" or otherwise or at all submitted to the qualified electors of the said defendant corporation at a special election duly or otherwise or at all held for that purpose, or for any purpose, or called or held in the same manner in which other elections are held in such city, or in any manner, the question of refunding the said outstanding indebtedness, or any indebtedness, of said defendant as then evidenced by the bonds thereof, or otherwise.

III.

Denies that the notice, or any notice, of such election recited the indebtedness to be refunded, together with the denomination, character, time of payment, rate of interest, or all or any other details or detail of the bonds, or any bonds, proposed to be issued, or contained any recitals or recital whatever, and in this behalf alleges that no notice was ever given or published calling or announcing said or any election in the city of Santa Cruz, on the question of refunding the bonded indebtedness, or any indebtedness, of said city of Santa Cruz.

IV.

Denies that at such, or at any, election on the thirteenth day of March, A. D. 1894, or on any other date or day, more than two-thirds of the qualified electors, or two-thirds of the qualified electors, of said defendant, voted in favor of refunding the then outstanding indebtedness, or any indebtedness of the said defendant, as evidenced by the bonds thereof, or otherwise, or assented to the execution and issue, or to the execution or issue, of the bonds and coupons
19 set forth and described in plaintiff's amended complaint, or any bonds or coupons whatever.

V.

Denies that on the twenty-sixth day of March, 1894, or at any other time or at all, the said mayor and common council passed or adopted a certain ordinance, or any ordinance, for refunding its indebtedness, or any indebtedness, of the city of Santa Cruz, known and designated as "ordinance No. 220 of the common council of the city of Santa Cruz."

VI.

Denies that all acts, conditions, or things, or any act, condition, or thing, required by law to be done precedent to the issue of the alleged bonds and coupons mentioned and described in plaintiff's amended complaint, were or was properly done and approved, or properly done or approved, or done or approved, in legal and due form as required by law, or in legal or due form as required by law, or as required by law, or at all.

VII.

Denies that on the sixteenth day of April, 1894, or on any other day or date, the said city of Santa Cruz, by its mayor and city clerk, or otherwise or at all, executed three hundred and sixty (360) bonds or obligations, conditioned as set forth in plaintiff's complaint, or otherwise, or at all.

In this behalf defendant admits that on or about said sixteenth day of April, 1894, one William T. Jeter and one O. J. Lin-
20 coln, as mayor and city clerk respectively of said city of Santa Cruz, without any right, jurisdiction, or authority whatever, signed three hundred and sixty (360) documents, purporting to be refunding bonds, with interest coupons attached thereto, of the city of Santa Cruz, and purporting to be conditioned, and of character as set forth in plaintiff's complaint herein; but this defendant alleges that the pretended execution of said purported bonds and coupons was wholly unauthorized, invalid, and void.

VIII.

Denies that before the delivery of the said bonds and coupons, as alleged in plaintiff's amended complaint, or at any other time, the said defendant made provision for the collection of an annual tax, or any tax sufficient to pay the interest on the same, or any portion

thereof, as it should fall due, or otherwise or at all, and denies that defendant made provision to constitute a sinking fund, or any fund, for the payment of the principal thereof, or any portion thereof, either as it should fall due, or otherwise, or at all, and in this behalf, defendant alleges that the pretended ordinance of said mayor and common council of the city of Santa Cruz, purporting to make provision for the collection of an annual tax as alleged in plaintiff's complaint, was wholly unauthorized by any provision of law, or election, or choice or direction of the said city of Santa Cruz, or the people of the city of Santa Cruz, and was wholly invalid and void.

IX.

Denies that said bonds and coupons, or said bonds or coupons, were or are in the form described in the said or any notice
21 of the or any special election of March 13, 1894, or of any other date or day, and denies that any notice of such or any special election containing any description whatever of either said bonds or coupons was ever made, given, or published.

X.

Denies that on or about the thirteenth day of April, 1894, or at any other time, or at all, the said defendant, by its officers, or otherwise, for value received, or otherwise, delivered the said three hundred (300) and sixty (60) bonds, or any bonds, of the city of Santa Cruz, with the coupons thereunto attached, or otherwise, to one Walter Stanton, or to any person whomsoever; and defendant in this behalf alleges that, on or about the twenty-third day of April, 1894, three hundred and sixty (360) documents, signed as in this answer above alleged, and purporting to be refunding bonds of the city of Santa Cruz, with interest coupons thereto attached, were by one Walter Stanton stolen, taken, and carried away from the city clerk of the city of Santa Cruz, and defendant verily believes, and upon its information and belief alleges, that the purported bonds and coupons of Santa Cruz set forth in plaintiff's complaint are a portion of the said documents so stolen, as aforesaid.

XI.

Defendant has no information on the subject sufficient to enable it to answer the allegation that "one Walter Stanton afterwards, and before the maturity thereof, sold and delivered to the
22 plaintiff herein the nine bonds of the first series, numbered from one to nine, both inclusive, and two hundred and eighty-two of the coupons maturing on April 15, 1895," and therefore, upon that ground, denies that Walter Stanton, afterwards or before the maturity thereof, or at all, sold or delivered to the plaintiff herein the nine bonds, or any bonds, of the first or of any series, numbered from one to nine, both inclusive, or otherwise, and denies that said Walter Stanton, at the same time or at any time, sold or delivered to plaintiff two hundred and eighty-two of the coupons, or any coupons, or coupon, maturing on April 15, 1895, or at any time or at all.

XII.

Defendant has no knowledge or information on the subject sufficient to enable it to answer the allegation "that the said plaintiff ever since has been, and now is, the lawful owner and holder of the said nine bonds and the said two hundred and eighty-two coupons," and placing its denial on that ground, defendant denies that said plaintiff ever since has been and now is, or ever since has been, or now is, or ever has been or is, the lawful owner and holder, or the lawful owner or holder, or the owner or holder of said nine bonds, or any bonds or bond, or of the said two hundred and eighty-two coupons, or any coupons or coupon, of the said city of Santa Cruz.

XIII.

Denies that there is now, or at any time was or has been, either due or unpaid to the plaintiff, on said bonds or coupons, the sum of twenty-three thousand one hundred dollars, or any sum or
23 sums whatever, in gold coin of the United States of America, or otherwise, either with interest thereon from the said fifteenth day of April, 1895, or from any other day or date, or at all, and denies that said bonds, or any thereof, or any interest thereon, is or ever has been, due or payable to the said plaintiff, or to any other person or persons whomsoever.

Second.

For a further and separate answer and defense to plaintiff's amended complaint herein, defendant alleges:

That at the time of the alleged election on the question of refunding the outstanding indebtedness of the city of Santa Cruz, as set forth in the plaintiff's amended complaint, said city of Santa Cruz had no outstanding indebtedness, warrants thereof evidenced either by bonds, or which was either due or payable, or subject to refunding.

Third.

For a further and separate answer and defense to plaintiff's amended complaint herein, defendant alleges:

I.

That at the time of the alleged election on the question of refunding the outstanding bonded indebtedness of the city of Santa Cruz, as set forth in the plaintiff's amended complaint herein, the total outstanding indebtedness of the said city of Santa Cruz, which was evidenced by regularly issued and valid bonds and warrants thereof, was thirty-nine thousand dollars, and no more, no part of which was at that time either due or payable.

24 II.

That at said alleged election, the question submitted to the people who were in any way informed thereof was to refund the following alleged obligations of the city of Santa Cruz, namely:

Four hundred and fifty bonds of the denomination of $500 each, dated January 16, 1889, bearing interest at the rate of five per cent. per annum, issued by said city of Santa Cruz, for the purchase and construction of city water works; also eighty-nine first mortgage bonds of the denomination of $1,000 each, issued by a *probate* corporation known as the City Water Company of Santa Cruz, dated May 1, 1890, and bearing interest at the rate of six per cent. per annum; also certain municipal improvement bonds for the aggregate sum of $39,000.

II.

That all of said four hundred and fifty bonds of the denomination of $500 each were and each of them was invalid and void.

III.

That all and each of the bonds last hereinabove mentioned were and was executed, issued, sold, and delivered after the act of the legislature of the State of California authorizing their execution, issuance, sale and delivery, had been repealed, namely, after the nineteenth day of March, 1889.

IV.

That at the time of the execution, issuance, sale, and delivery of said last-mentioned bonds, the sum thereof, namely, $225,000, was in excess of five per cent. upon the assessed value of all the real and personal property of said city of Santa Cruz, and the sum thereof was in excess of the amount of indebtedness which the city of Santa Cruz might lawfully incur at the time of the execution, issuance, sale, and delivery thereof, for the purpose for which said bonds were issued, namely, for public improvements.

V.

That said eighty-nine so-called mortgaged bonds, of the denomination of $1,000 each, were, and each of them was, without right and without authority, issued by a private corporation known as the City Water Company of Santa Cruz, upon a pretended mortgage, executed without right or authority, by said private corporation, upon municipal property of the city of Santa Cruz, and no part of the sum of said so-called first-mortgage bonds, or of said mortgage, is or ever was a part of the municipal indebtedness of the city of Santa Cruz, and no part thereof was ever evidenced by bonds or warrants of the city of Santa Cruz.

VI.

That on February 26, 1894, the mayor and common council of the city of Santa Cruz passed and approved an alleged ordinance designated and known as "ordinance No. 314 of the city of Santa Cruz," purporting to provide for the submission to the electors of the city of Santa Cruz of the question of refunding the outstanding indebtedness of said city of Santa Cruz, at an election to be held on

March 13, 1894, by the terms of which said ordinance it was
26 provided and required that at such election the propositions to refund the invalid and void obligations, in this separate answer and defense above mentioned, be so joined and united with the propositions to refund the legitimate obligations of said city of Santa Cruz that no elector of the city of Santa Cruz could, at such election, vote for or against any of said propositions without voting for or against all of said propositions by a single mark on his ballot, which mark the said alleged ordinance required to be placed in a square opposite the word "Yes" or in a square opposite the word "No" on such ballot, and said alleged ordinance No. 314 prohibited and prevented any elector and all electors, at such election, from voting in favor of refunding the legitimate obligations of said city of Santa Cruz, and against refunding all or any of the aforesaid invalid, void, and pretended obligations thereof.

VII.

That on the twenty-sixth day of February, 1894, the mayor and common council of the city of Santa Cruz adopted an ordinance known and designated as ordinance No. 315 of the city of Santa Cruz, by the terms of which the city clerk of the city of Santa Cruz was authorized, directed, and ordered to cause to be published in the "Santa Cruz Surf," a daily newspaper published in said city of Santa Cruz, and in the "Santa Cruz Daily Sentinel," a daily newspaper published in said city of Santa Cruz, for not less than ten days before the thirteenth day of March, 1894, a notice of a special election to be held in said city of Santa Cruz on the thirteenth day of March,
1894, on the question of refunding the outstanding indebted-
27 ness of the city of Santa Cruz, and said ordinance by its terms prescribed the form of such notice.

VIII.

That the said city clerk of the city of Santa Cruz wholly failed and neglected to cause said or any notice of said election to be published as required, ordered and directed by said ordinance in said "Santa Cruz Surf" or in said "Santa Cruz Daily Sentinel," or in any newspaper, or in any manner whatever, and no notice of said election was ever published in said "Santa Cruz Surf" or in said "Santa Cruz Daily Sentinel," or in any other newspaper, or at all.

IX.

That by reason of the failure of said city clerk to cause the notice of said election to be published as prescribed in said ordinance No. 315, a very large number, namely, more than one-half of the then qualified electors of said city of Santa Cruz, failed to attend said election, and failed to vote at said election.

X.

That no election was, on the thirteenth day of March, 1894, or at any other time, or at all, held or conducted in the city of Santa

Cruz on the question of refunding the outstanding indebtedness, or any indebtedness, of said city.

XI.

That, as defendant is informed and believes, plaintiff herein, at and before the time of the alleged purchase by him of the
28 so-called bonds and coupons sued upon in this action, well knew and had full knowledge and notice of all the facts in this separate answer and defense set forth.

Fourth.

For a further and separate answer and defense to plaintiff's amended complaint herein, defendant alleges:

I.

That the said three hundred and sixty alleged bonds or obligations of the city of Santa Cruz described in plaintiff's amended complaint herein, together with the alleged coupons thereto attached, including the nine alleged bonds and the two hundred and eighty-two alleged coupons sued upon by plaintiff herein, were, and each of them was, on the twenty-third day of April, A. D. 1894, by one Walter Stanton willfully, unlawfully, and feloniously taken, stolen, and carried away from the possession of the city clerk of the said city of Santa Cruz, and that the said city of Santa Cruz received no consideration whatever therefor.

II.

That defendant is informed and believes, and upon its information and belief states the fact to be, that at and before the time of the alleged sale and delivery of the said nine alleged bonds and the said two hundred and eighty-two alleged coupons to the said plaintiff by the said Walter Stanton, that the said plaintiff well knew and had full knowledge and notice of the fact that the said alleged bonds and the said alleged coupons, and each and every of them, had been so stolen as aforesaid by the said Stanton from the
29 said city of Santa Cruz, and that the said city of Santa Cruz had received no consideration whatever therefor.

Fifth.

For a further and separate answer and defense to plaintiff's amended complaint herein, defendant alleges:

I.

That at all times during the year 1894, up to and including the sixteenth day of April, 1894, the assessed value of all the taxable real estate and personal property in said city of Santa Cruz was $3,907,404, and no more.

II.

That at all times during the year 1894, up to and including the sixteenth day of April, 1894, the said city of Santa Cruz had out-

standing municipal indebtedness evidenced by the bonds c
city to the amount and sum of two hundred and seventy tho
dollars.

III.

That all of said outstanding municipal indebtedness of sa
of Santa Cruz had been incurred for public improvement c
city, and no part thereof was incurred for any other purpose
ever.

IV.

That the pretended issue of three hundred and sixty so-cal
funding bonds of the par value of one thousand dollars each
sixteenth day of April, 1894, as set forth in the plaintiff's com
was an unlawful attempt without authority on the part of the
and common council of the city of Santa Cruz to increa
30 bonded indebtedness of said city beyond the limit of
per cent. upon the assessed value of all the taxable real
and personal property in said city, as prescribed and fixed
laws of the State of California.

V.

That said pretended issue of three hundred and sixty so-
refunding bonds, of the par value of one thousand dollars ea
the sixteenth day of April, 1894, as set forth in plaintiff's com
and every part and portion of said pretended bond issue, an
and every pretended bond thereof, is, and at all times has
an attempted overissue of municipal bonds of the city of
Cruz.

VI.

That as defendant is informed and believes, the plaintiff
at the time of his alleged purchase of the so-called bonds and co
sued upon in this action, had full knowledge and notice tha
pretended bonds and coupons, and each and all of them, const
an unauthorized and unlawful overissue of the municipal bo
the city of Santa Cruz.

Sixth.

For a further and separate answer and defense to plai
amended complaint herein, defendant alleges:

I.

That the so-called refunding bonds sued upon in this actio
particularly described in plaintiff's complaint, were n
31 by the city of Santa Cruz, or by the governing body o
city, or by any officer or person representing said ci
their face value in United States gold coin, or for not less tha
face value in United States gold coin, or for any value or s
consideration whatever, either in gold coin or otherwise, to
Stanton, or to any other person.

II.

That said so-called bonds and the coupons thereto attached, and each and all of them, were and was fraudulently taken by one Walter Stanton from the custody of the city clerk of the city of Santa Cruz, on or about the twenty-third day of April, 1894, and then and there by him, the said Walter Stanton, appropriated to his own use.

III.

That no consideration whatever was at any time given to the city of Santa Cruz for said bonds, or for any of them, by said Walter Stanton, or by any other person.

IV.

That, as defendant is informed and believes, the plaintiff herein, at the time of his alleged purchase of the so-called bonds and coupons sued upon in this action, had full knowledge and notice that said pretended bonds and coupons were not sold by the city of Santa Cruz for their face value, or for not less than their face value in United States gold coin, and plaintiff at said time had full knowledge and notice that said Walter Stanton had fraudulently taken said bonds and coupons and each and all of them,
32 from the custody of the city clerk of the city of Santa Cruz, and that said city of Santa Cruz had never received any consideration whatever for said bonds or coupons, or for any of them.

Wherefore, defendant prays that plaintiff take nothing by this action, and that defendant be hence dismissed with its costs.

LINDSAY & CASSIN,
Attorneys for Defendant.

JAMES G. MAGUIRE,
E. R. TAYLOR, *Of Counsel.*

STATE OF CALIFORNIA, } ss:
County of Santa Cruz, }

H. H. Clark, being duly sworn, says: That he is the duly elected, qualified and acting mayor of the defendant corporation, City of Santa Cruz, in the above entitled action; that he has read the foregoing answer to the plaintiff's amended complaint, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, he believes it to be true.

H. H. CLARK.

Subscribed and sworn to before me this fifth day of September, 1896.

[SEAL.] EDWARD R. SHIRRAN,
Notary Public in and for the County of Santa Cruz, State of California.

33 I hereby certify that I have read the foregoing answer, and in my opinion it presents good and sufficient defenses to the causes of action set forth in plaintiff's amended complaint.

San Francisco, September 7, 1896.

JAMES G. MAGUIRE,
Of Counsel for Defendant.

(Endorsed:) Service by copy of the within answer is hereby admitted this seventh day of September, 1896. Chickering, Thomas & Gregory, attorneys for plaintiff.

(Endorsed:) Filed September 7, 1896. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE
vs.
CITY OF SANTA CRUZ.

Stipulation Waiving Jury.

A jury trial in the above-entitled action is hereby waived.

CHICKERING, THOMAS & GREGORY,
Attorneys for Plaintiff.
JAMES G. MAGUIRE,
LINDSAY & CASSIN, *Attorneys for Defendant.*

34 (Endorsed:) Filed June 1, 1897. W. J. Costigan, clerk.

In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
THE CITY OF SANTA CRUZ, Defendant. } No. 12094.

Findings of Fact and Conclusions of Law.

The court, upon consideration of the evidence herein, finds the following facts:

1. That all of the bonds and coupons referred to in the amended complaint were, prior to the commencement of this action, duly assigned to the plaintiff, and that the plaintiff was, at the date of the commencement of this action, the holder of the legal title to all said bonds and coupons.

2. That the plaintiff did not pay any money consideration for the assignment to him of any of said bonds or coupons, but all of said bonds or coupons were assigned to plaintiff for collection only.

3. The Northern Counties Investment Trust Company, Limited, is the real owner of three of the coupons upon which this action is brought, and were attached to bonds numbered *numbered*
35 181, 182, and 183, dated April 16, 1894. Said Northern Counties Investment Trust Company, Limited, at and prior

to the time of becoming owner of said bonds, had notice that the same had been illegally issued by the city of Santa Cruz for the purpose of refunding and taking up certain bonded indebtedness of the City Water Company of Santa Cruz.

4. That the defendant was, at all of the times referred to in the complaint, and still is, a municipal corporation of the fifth class, organized and existing under and by virtue of a certain statute of the State of California, approved March 1, 1866, entitled "An act to incorporate the town of Santa Cruz," and an act supplemental thereto, approved March 11, 1878, and entitled "An act to reincorporate the city of Santa Cruz."

5. That on March 13, 1894, the defendant had an outstanding bonded indebtedness of $271,000, or thereabouts, and on said day the assessed valuation of all the taxable real estate and the personal property in said city was $3,907,404; that on said date there was submitted to the qualified electors of the defendant corporation at a special election called and held for that purpose, under and in pursuance of ordinance No. 314 of the defendant city, dated February 26, 1894, and in accordance with the notice stated in finding No. 6, the question of refunding the said outstanding indebtedness of the said defendant, as then evidenced by the bonds thereof; and the further question of refunding eighty-nine first-mortgage bonds, with interest thereon from November 1, 1893, of a certain corporation, to wit, the City Water Company of Santa Cruz, and which were separately described in said ordinances Nos. 314 and
36 315 as a portion of the bonded indebtedness of the defendant. Said bonds of the City Water Company of Santa Cruz being each of the denomination of $1,000, and each bearing interest at the rate of six per cent. per annum, payable semi-annually, and secured by a mortgage or deed of trust upon the City Water Works of Santa Cruz, theretofore purchased by the defendant city from the said City Water Company of Santa Cruz.

6. Ordinance No. 315 of said defendant city, dated February 26, 1894, provided for the notice to be given of said election referred to in finding No. 5, and directed the city clerk to cause to be published in the "Santa Cruz Surf" and "Santa Cruz Sentinel," for not less than ten days before the thirteenth day of March, 1894, the notice of said special election, and to post said notice at each place of election in said city; said ordinance further provided that the notice so to be published and posted should be substantially in the words and figures set out in said ordinance, and should contain, among other things, a recital of the indebtedness to be refunded, as set forth in the ordinance referred to in finding No. 5, together with the denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued, and all of which matters were fully set forth and stated in the ordinance No. 315 of said defendant, together with notice that the polls of such election would be opened at sunrise in the morning of said day of election, and should close at five o'clock p. m. of the same day, and at said election, held on March 13, 1894, the polls were opened and
37 closed at the hours named in said ordinance, and more than two-thirds of the qualified electors of the said defendant

voted in favor of refunding the then outstanding bonded indebtedness of the said defendant, and also the refunding of the said eighty-nine first-mortgage bonds theretofore issued by the said corporation, the City Water Company of Santa Cruz.

7. That the only notice given of said election was the publication by the clerk of said defendant city of said ordinance No. 315, referred to in the preceding finding, in the papers named in said ordinance No. 315, and for the length of time therein prescribed, and posting the copies of said ordinance at each place of election in said city, and for the length of time prescribed in said ordinance.

8. On the twenty-sixth day of March, 1894, ordinance No. 320 was duly enacted by the mayor and common council of the defendant, and which ordinance provided for refunding the bonded indebtedness of the city of Santa Cruz and issuing bonds therefor, in accordance with the will of the electors of defendant, as expressed at the election referred to in finding No. 6, section 1 of said ordinance providing, among other matters:

"There shall be issued by the city of Santa Cruz three hundred and sixty (360) bonds of the denomination of one thousand (1,000) dollars each, bearing interest at the rate of five per cent. per annum, payable annually. Said bonds shall be of the character known as 'serials,' and shall be payable, principal and interest, in gold coin of the United States, in the manner following:

"One-fortieth part of the principal of the indebtedness to
38 be incurred shall be payable annually, to wit, the sum of $9,000, together with the annual interest on all sums of said indebtedness then unpaid, until the whole amount of said indebtedness is paid. The bonds to be issued shall be numbered consecutively from one to three hundred and sixty, both inclusive, and shall be divided into forty series, to be numbered consecutively from one to forty, both inclusive, and consisting of nine bonds each. The first series shall include those bonds which are numbered from one to nine, both inclusive, and each succeeding series shall include nine bonds which are numbered consecutively after those included in the next preceding series. The bonds included in the first of said series shall be payable on the fifteenth day of April, A. D. 1895, and all of the remaining series shall be made payable, one series in each year, in consecutive order on the fifteenth day of April in each succeeding calendar year thereafter, until and including the year 1934.

"Said bonds shall be made payable to bearer, and shall bear date of the sixteenth day of April, 1894, and shall be signed by the mayor and city clerk, and shall have affixed thereto the seal of the city of Santa Cruz.

"To each of said bonds there shall be attached interest coupons, equal in number to the number of years which the bond has to run before its maturity.

"Each of said coupons shall represent one year's interest upon the principal amount of the bond, at the rate of five per cent. per annum, viz., fifty dollars, and one of said coupons shall be payable on the fifteenth day of April in each calendar year. Each
39 coupon shall be made payable to bearer, and must bear the lithographed signatures of the mayor and city clerk."

And said section further provided that each of said bonds should contain the following recital:

"This bond is one of a series of bonds of like date, tenor, and effect, issued by the said city of Santa Cruz for the purpose of refunding the bonded indebtedness of said city and issuing bonds therefor, and providing for the payment of the same, under and in pursuance of and in conformity with the provisions of an act of the legislature of the State of California, 'An act to amend an act entitled "An act authorizing the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same" (approved March 15, 1883),' approved March 1, 1893, and in pursuance of and in conformity with the constitution of the State of California and the ordinances of the city of Santa Cruz, and in pursuance of and in conformity with a vote of more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election, duly and legally called and held and conducted in said city, as provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published, in the manner as required by law, and after the result of said election had been duly canvassed, found, and declared in the manner and as required by law.

"And it is hereby certified and declared that all acts, con-
40 ditions, and things required by law to be done precedent to and in the issue of said bonds, have been properly done, happened, and performed in legal and due form and as required by law."

It was further provided, by section 3 of said ordinance, that the city clerk of said defendant city should give notice by publication in certain papers named, for the period of fifteen days next preceding the sixteenth day of April, 1894, to the effect that said bonds were to be sold by said defendant city, and stating that "sealed bids for the purchase of said bonds, or any number thereof, will be received by the city clerk, on behalf of the mayor and common council of said city, at the office of the city clerk, in said city of Santa Cruz, from the first publication of said notice up to the hour of two o'clock p. m. on the sixteenth day of April, 1894, and that thereafter said bonds will be sold by the mayor and common council to the highest bidder for not less than their face value in United States gold coin, to be paid on delivery of said bonds at the city treasurer's office in said city of Santa Cruz."

Section 4 of said ordinance further provided:

"There shall be levied and collected annually, for the term of forty (40) years, by the proper authorities of the city of Santa Cruz, at the time of the levy and collection of the general taxes of the city of Santa Cruz, and in the same manner as for such levy and collection provided, a special tax sufficient to pay the annual interest as it falls due upon the portion of said bonds remaining unpaid,
41 and also sufficient to pay one-fortieth part of the principal of said bonds. The moneys so collected for the payment of the

principal sum of said bonds shall constitute a sinking fund for the payment of the principal sum of said bonds, as the same falls due, and with which said principal sum shall be paid as the same falls due, as follows, to wit:

Nine thousand dollars ($9,000) of such principal sum on the fifteenth day of April, 1895, and $9,000 of such principal sum on the fifteenth day of April of each year thereafter, until the whole of the principal sum of $360,000 is paid. And the said city of Santa Cruz shall and will pay said bonds and the interest thereon to the holders and owners thereof as the same falls due."

9. On April 11, 1892, Wm. T. Jeter was duly elected mayor of the defendant City of Santa Cruz, and J. Howard Bailey, J. F. Hoffmann, E. G. Green, and F. W. Lucas were, on the same day, duly elected members of the common council of said city, and the said persons so elected as mayor and members of the common council duly qualified for their respective offices within ten days after their said election, and duly entered upon the duties of their respective offices. Section 3 of an act of the legislature of the State of California, entitled "An act to reincorporate the city of Santa Cruz," approved March 11, 1876, provides that the mayor and common council of said city shall hold their offices for a term of two years, and until their successors are duly elected and qualified. On the ninth day of April, 1894, Robert Effey was duly elected as mayor of said defendant city to succeed William T. Jeter, and duly
42 qualified as such between the hours of eleven o'clock a. m. and two o'clock p. m. of April 16, 1894; and Messrs. Henry G. Ensell, John Howard Bailey, J. D. Maher, and Frank K. Roberts were, on April 9, 1894, duly elected members of the common council of said defendant city, and all of them duly qualified as such councilmen before the meeting of the common council of said city defendant held April 16, 1894. The persons so elected mayor and members of the common council on April 9, 1894, with the exception of J. Howard Bailey, who was re-elected councilman, did not actually enter upon their duties as such officers until May 7, 1894, and the said Wm. T. Jeter, J. Howard Bailey, J. F. Hoffmann, E. G. Green, and F. W. Lucas continued to act publicly as mayor and members of the common council of said defendant city until May 7, 1894, without protest from any person, and held seven meetings of said council between and including the date of April 16, 1894, and May 7, 1894.

10. On April 16, 1894, to which date the common council of said defendant city had regularly adjourned, the said Wm. T. Jeter, acting as mayor, and said J. Howard Bailey, F. J. Hoffmann, E. G. Green, and F. W. Lucas, being present and acting as the common council of the said city of Santa Cruz, and no bids having been received for the purchase of the refunding bonds issued by said city under and by virtue of ordinance No. 320, referred to in finding No. 8, the proposition of Coffin & Stanton to take all said bonds dated February 27, 1894, was accepted, upon the condition that they should furnish satisfactory security for the faithful performance

of the agreement contained in their said proposition. Said proposition was in the following words:

43 "The City of Santa Cruz deciding to refund $225,000 in five per cent. bonds, $89,000 in six per cent. mortgage bonds, $39,000 municipal improvement bonds, with accrued interest thereon, total $360,000 in five per cent. refunding bonds of the denomination of $1,000 each, legally issued under the act of the legislature of the State of California approved March 1, 1893, advertising the sale of same, and in the event of the city not securing satisfactory bids for such bonds at said sale, Coffin & Stanton agree to purchase said bonds at par and accrued interest, contracting with the city to assume all obligations of interest and principal on the bonds to be refunded, making the refunding an assured fact from the date of the sale and delivery of the bonds to them.

"The funds derived from the purchase of the $360,000 in said bonds to be deposited with Coffin & Stanton to the credit of the funding fund, and to be used to take up and refund the outstanding bonds as above mentioned, Coffin and Stanton forwarding same from time to time to the city for cancellation, charging such bonds to the funding fund at par (100), with interest to April 16 only.

"Coffin and Stanton also agree to surrender and deliver to the city all bonds of the City Water Company outstanding, over and above the $89,000 above mentioned, and to surrender and assign to and release said city from all claims and demands against said city of Santa Cruz, under their contract with said city for construction of water works.

"In consideration of the above agreement, the city on its
44 part agrees to pay Coffin and Stanton three per cent. on the par value of the refunding bonds in the event of the city availing itself of its terms, on or before April 16, 1894.

"Coffin and Stanton further agree to purchase and furnish said city with the blank bonds and coupons thereto at their own cost and expense.

"Dated at Santa Cruz, February 27, 1894.

"(Signed) COFFIN & STANTON.

"Witness to signature:
"Z. N. GOLDSBY."

11. On April 23, 1894, the said Wm. T. Jeter as mayor, and the said Lucas, Bailey, Hoffman, and Green, as members of the common council, publicly met pursuant to adjournment of the common council, and, assuming to act as mayor and members of the common council of said defendant city, without protest or opposition from any one, accepted and approved a bond presented by the said Coffin & Stanton, for the faithful performance by them of their agreement contained in their proposition set out in the preceding finding, and directed the clerk of the said defendant city to deliver to Coffin & Stanton the refunding bonds referred to in the complaint in this action, and all of said bonds were in accordance with such direction, delivered to Coffin & Stanton, of April 24, 1894.

12. All of the assignors of plaintiff, other than the one referred to in finding No. 3, and E. G. & E. Wallace, who purchased certain of the refunding bonds and coupons sued on under the circumstances hereinafter set forth in this finding, were *bona fide* purchasers of the bonds and coupons assigned by them to plaintiff, and sued on
45 in this action, and were without notice of any fact tending to impeach the truth of the recitals in said bonds; and in relation to E. G. & E. Wallace, from whom plaintiff derives the legal title to the remaining bonds and coupons sued on, the court finds that on or about September 22, 1894, E. G. & E. Wallace, assignors of plaintiff, purchased from Coffin & Stanton 150 of the said bonds and coupons referred to in the preceding finding, including eight of the bonds and coupons sued on in this action, giving in exchange therefor 435 shares of the stock of the Page Belting Company, and $116,400 in cash. Said purchase and exchange was made by the firm of F. H. Prince & Co., acting as agents of E. G. & E. Wallace, and also acting for Coffin & Stanton, in the same transaction. The firm of F. H. Prince & Co. received from E. G. & E. Wallace for services as their agents in effecting the sale of the stock of the Page Belting Company, the sum of two thousand five hundred dollars, and said Coffin & Stanton agreed to compensate said F. H. Prince & Co. for their services rendered to them in the same transaction by a division of all profits which should be realized by said Coffin & Stanton, upon the resale of the said shares of stock of the Page Belting Company. At the time of the said sale of the refunding bonds of the defendant city to E. G. & E. Wallace, the said F. H. Prince & Co. had notice of all matters recited in the ordinances of defendant, numbered 314, 315, and 320, hereinbefore referred to in the preceding findings. The said F. H. Prince & Co. did not communicate their said knowledge to E. G. & E. Wallace, and the said E. G.
46 & E. Wallace had no actual knowledge or actual notice of any of said matters, nor actual notice of any fact tending to impeach the truth of the recitals contained in said bonds—and unless the notice to F. H. Prince & Co. is to be imputed as notice to them, the said E. G. & E. Wallace had no constructive notice of the facts recited in said ordinances, or of any fact tending to impeach the truth of the recitals contained in said bonds.

13. That all of the bonds and coupons sued on were in the form alleged and set out in the complaint, and bore date and were signed and attested in the form and upon the date and by the persons alleged in the complaint, but some of said bonds were signed by Wm. T. Jeter on April 16, 1894, after the qualification of his successor in the office of mayor.

14. That all of the bonds and coupons sued on matured April 15, 1895, and no part of the same has been paid.

15. Coffin & Stanton never complied with their agreement set out in finding No. 10, and upon which the bonds and coupons were delivered to them, and the defendant City of Santa Cruz never received any consideration on account of the issuance of said bonds, other than the promise of Coffin & Stanton to assume the payment of the bonds mentioned in their said agreement.

Conclusions of Law.

As conclusions of law from the foregoing facts, the court finds:

That Wm. T. Jeter was the *de facto* mayor of the defendant City of Santa Cruz on the sixteenth day of April, 1894, and so con-
47 tinued to be until May 7, 1894; and that he and the persons who assumed to act as members of the common council of defendant on the sixteenth and twenty-third days of April, 1894, to wit, J. H. Hoffmann, E. G. Green, and F. W. Lucas, were on those days the *de facto* mayor and the *de facto* members of the common council of the defendant city; and J. H. Bailey, who also acted as a member of its common council on said days, was a *de jure* member of such common council; and that the bonds and coupons sued on are upon their face valid obligations of the defendant.

2. That E. G. & E. Wallace were *bona fide* purchasers of the bonds and coupons assigned by them to plaintiff, without notice of the facts recited in the ordinances of the defendant, numbered 314, 315, and 320; and without notice of any fact tending to impeach the truth of the recitals contained in said bonds.

As a general conclusion from the foregoing facts and conclusions of law, the court finds that the plaintiff is not entitled to recover upon the three coupons assigned to him by the Northern Counties Investment Company, Limited, and is entitled to recover as against the defendant on all the other bonds and coupons assigned to him, a judgment in the sum of $22,950, and interest thereon from April 15, 1895, and costs of suit.

Let such judgment be entered.

Dated September 29, 1898.

JOHN J. DE HAVEN, *Judge.*

(Endorsed:) Filed September 29, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

48 In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
CITY OF SANTA CRUZ, Defendant. } No. 12094.

Additional Findings of Facts, etc.

On the twenty-eighth day of November, A. D. 1898, the motions of defendant for a new trial of said action and for additional findings of fact, came on regularly to be heard before the court, Messrs. Chickering, Thomas & Gregory appearing as attorneys for the plaintiff, and Messrs. Lindsay & Cassin, James G. Maguire and John Garber appearing as attorneys for the defendant; and, the court having heard arguments thereon, and being fully advised in the premises,

It is now ordered, that defendant's motion for a new trial of said

cause be, and the same is hereby denied; and it appearing to the court proper that additional findings of fact should be made, in order to set forth with more particularity the matters embraced in the original finding of facts filed herein on September 29, 1898, the court now finds the following facts:

1. Ordinance No. 314 of the defendant City of Santa Cruz, referred to in finding No. 5 of the original findings filed herein, is in the words and figures following, to wit:

49 "*Ordinance No.* 314.

"An ordinance calling a special election and submitting to the qualified electors of the city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same.

"Whereas, the city of Santa Cruz has an outstanding indebtedness evidenced by the bonds of said city, as follows:

"Four hundred and fifty (450) bonds (with interest thereon from January 15, 1894), dated January 15, 1889, of the denomination of $500 each, bearing interest at the rate of five per cent. per annum, payable annually, issued by said city of Santa Cruz, under the provisions of an act of the legislature of the State of California, entitled, 'An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, incorporated under the laws of this State,' approved March 15, 1887, which said bonds were heretofore sold by said city and the proceeds thereof used by said city in the purchase and construction of the city water works.

"2. Eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893) of the corporation, the City Water Company of Santa Cruz, heretofore issued by said corporation, the City Water Company of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand (1,000) dollars each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are secured by a mortgage or deed of trust upon the property known as the city water works of Santa Cruz,
50 executed by the City Water Company of Santa Cruz, as party of the first part therein, to the Holland Trust Company of New York, as trustee, party of the second part therein; and which said bonds outstanding were, at the time of the conveyance by the City Water Company, of Santa Cruz, to the city of Santa Cruz, of the property known as the city water works, and now are, a valid lien and charge upon the said property known as the city water works, and became thereby a part of the bonded indebtedness of the city of Santa Cruz, and

"3. Sixty-five (65) municipal improvement bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination of five hundred (500) dollars and twenty-six (26) municipal improvement bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination of two hundred and fifty (250) dollars each, all bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city

of Santa Cruz, and under and by virtue of a certain act of the legislature of the State of California, entitled 'An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations incorporated under the laws of this State,' approved March 15, 1887.

"And whereas, the common council of said city of Santa Cruz deem it for the best interests of said city of Santa Cruz to refund such indebtedness under the provisions of an act of the legislature of the State of California, entitled, 'An act to amend an act entitled,

"An act to authorize the common council, the board of trus-
51 tees, or other governing body of any incorporated city or town other than cities of the first class, to refund this indebtedness, issue bonds therefor, and provide for the payment of the same," approved March 15, 1883,' approved March 1, 1893.

"Now, therefore, the mayor and common council of the city of Santa Cruz do ordain as follows, to wit:

"SECTION 1. That a special election in and for the city of Santa Cruz, county of Santa Cruz, State of California, is hereby called, and will be held in said city, on Tuesday, the thirteenth day of March, A. D. 1894, at which there will be submitted to the qualified electors of said city the question of refunding the bonded indebtedness of said city and issuing bonds therefor, and providing for the payment of the same.

"SECTION 2. The indebtedness of said city, which it is proposed to refund, is as follows:

"1. Four hundred and fifty (450) bonds (with interest thereon from January 15, 1894), dated January 15, 1889, of the denomination of five hundred (500) dollars each, bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz, under the provisions of an act of the legislature of the State of California, entitled 'An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, incorporated under the laws of this State,' approved March 15, 1887, which said bonds were heretofore sold by said city and the proceeds thereof used by the said city in the purchase and construction of the city water works.

52 "2. Eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893,) of the corporation, the City Water Company of Santa Cruz, heretofore issued by said corporation, the City Water Company of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand (1,000) dollars each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are secured by a mortgage or deed of trust upon the property known as the city water works of Santa Cruz, executed by the City Water Company of Santa Cruz, as party of the first part therein, to the Holland Trust Company of New York, as trustee, party of the second part therein, and which said bonds outstanding were, at the time of the conveyance by the City Water Company of Santa Cruz to the city of Santa Cruz of the property known as the city water works, and now are a valid lien and charge upon said property known as the city water works, and

became thereby a part of the bonded indebtedness of the city of Santa Cruz.

"3. Sixty-five (65) municipal improvements bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination of five hundred (500) dollars each, and twenty-six (26) municipal improvement bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination of two hundred and fifty (250) dollars each, all bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz, under and by virtue of a certain act of the legislature of the State of California, entitled, 'An act authorizing the in-
53 curring of indebtedness by cities, towns, or municipal incorporations, incorporated under the laws of this State,' approved March 15, 1887.

"The denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued for the refunding of said indebtedness, are as follows:

"The bonds to be issued shall be three hundred and sixty (360) in number, of the denomination of one thousand (1,000) dollars each; they shall bear interest at the rate of five (5) per cent. per annum, payable annually. They shall be of the character known as 'serials,' and shall be payable, principal and interest, in gold coin of the United States, in the manner following:

"One-fortieth ($\frac{1}{40}$) part of the principal of the bond indebtedness to be incurred in the issuing of said bonds shall be payable annually, to wit, the sum of nine thousand (9,000) dollars, together with the annual intersst on all sums of said indebtedness then unpaid, and said principal and interest shall be payable each and every year on a day to be fixed by the mayor and common council of said city, until the whole amount of said indebtedness is paid. The bonds to be issued shall be numbered consecutively from one (1) to three hundred and sixty (360), both inclusive, and shall be divided in forty series, to be numbered consecutively from one (1) to forty (40), both inclusive, and consisting of nine (9) bonds each. The first series shall include those bonds which are numbered from one (1) to nine (9), both inclusive, and each succeeding series
54 shall include the nine (9) bonds which are numbered consecutively after those included in the next preceding series.

"The bonds included in the first of said series shall be made payable on the fifteenth day of April, A. D. 1895, and all of the remaining series shall be made payable in consecutive order on the fifteenth day of April, in each succeeding calendar year thereafter, until and including the year 1934.

"Said bonds shall be made payable to bearer, and shall bear date the sixteenth day of April, 1894, and shall be signed by the mayor and city clerk, and shall have affixed thereto the seal of the city of Santa Cruz. To each of said bonds, there shall be attached interest coupons, equal in number to the number of years which the bond has to run before its maturity. Each of said coupons shall represent a year's interest upon the principal amount of the bond, at the rate of five (5) per cent. per annum, viz., fifty (50) dollars, and shall

be payable on the fifteenth day of April of each calendar year. Each coupon shall be payable to bearer, and must bear the lithographic signatures of the mayor and city clerk.

"Said bond shall be substantially in the following form:

"UNITED STATES OF AMERICA, *State of California.*

"*Bond of the City of Santa Cruz.*

"No. —. Series —. $1,000.

"*Refunding Bond.*

"The City of Santa Cruz, a municipal corporation in the
55 county of Santa Cruz, State of California, is indebted to, and promises to pay to the bearer for value received, the sum of one thousand (1,000) dollars, gold coin of the United States, on the fifteenth day of April, A. D. ——, with interest thereon, in like gold coin, at the rate of five per cent. per annum, payable annually on the fifteenth day of April, of each calendar year from the date hereof, at the office of said city treasurer of Santa Cruz, on presentation and surrender of the proper interest-bearing coupon hereto attached.

"And for the payment of the principal sum herein named, and the interest accuing thereon, the said city of Santa Cruz is held and firmly bound, and its faith and credit and all the real and personal property of said city are hereby pledged for the prompt payment of this bond and interest at maturity.

"This bond is one of a series of bonds of like date, tenor, and effect, issued by the said city of Santa Cruz for the purpose of refunding the bonded indebtedness of the said city and issuing bonds therefor, and providing for the payment of the same, under and in pursuance of the same, and in conformity with the provisions of an act of the legislature of the State of California, entitled, 'An act to amend an act entitled "An act authorizing the common council, board of trustees, or other governing body of any incorporated city and town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same" (approved March 15, 1883),' approved March 1, 1893.

"And in pursuance of and in conformity with the constitution of the State of California, and the ordinances of the city of Santa
56 Cruz, and in pursuance of and in conformity with a vote of more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election duly and legally called and held and conducted, in said city, as provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published in the manner as required by law, and after the result of said election had been canvassed, found and declared in the manner and as required by law.

"And it is hereby certified and declared that all acts, conditions, and things required by law to be done precedent to and in the issue of said bonds, have been properly done, happened, and performed,

in legal and due form, as required by law. This bond ceases t
bear interest when due, unless presented for payment.

"In testimony whereof, the said City of Santa Cruz, by its mayo
and common council, has caused this bond to be signed by th
mayor of said city of Santa Cruz, and attested by its clerk, with th
seal of said city attached, this sixteenth day of April, A. D. 1894.

"——— ———,

"*Mayor of the City of Santa Cruz.*

"[SEAL.]

"Attest: ——— ———,

"*City Clerk.*"

The coupons attached to said bonds shall be substantially in th
following form:

57 "Refunding bond number —. Coupon number —.

"The City of Santa Cruz will pay to bearer hereof, on the fifteent
day of April, A. D. ——, at the office of the city treasurer of sai
city, fifty (50) dollars, gold coin of the United States, for interest o
bond No. —, issued sixteenth day of April, A. D. 1894.

"——— ———,

"*Mayor of the City of Santa Cruz.*

"——— ———,

"*City Clerk.*

"SECTION 3. Said bonds shall be sold in such manner as may b
provided by said common council, to the highest bidder, for not les
than their face value, in gold coin of the United States. The pro
ceeds of such sale shall be placed to the credit of funding fund, an
shall be applied only for the purpose of refunding the indebtednes
for which said bond shall have been issued.

"SECTION 4. In case it shall be determined to refund said bonde
indebtedness and issue bonds therefor, a sinking fund shall be create
for the payment of the principal of the bonds evidencing said in
debtedness of three hundred and sixty thousand (360,000) dollars
and interest thereon, as follows: The common council shall, at th
time of fixing the general tax levy for each year, and in the sam
manner for such tax levy provided, levy and collect annually each
year, sufficient money to pay one-fortieth part of the principal o
such indebtedness, and also the annual interest on the portion re
maining unpaid.

58 "SECTION 5. That the said clerk shall prepare for each elec
tion precinct or ward in the city not less than one hundre
(100) tickets for every fifty (50) or fraction of fifty (50) electors reg
istered in such ward, to be distributed to the qualified electors o
each ward as by law provided.

"The ballots to be used at said election shall be of the same char
acter as those prescribed by law to be used in other elections held
in such city of Santa Cruz, and have printed thereon the followin
caption and heading, setting forth the proposition to be voted upon
to wit: 'Municipal ticket'; underneath which shall be printed th

following: 'Proposition for refunding the bonded indebtedness of the city of Santa Cruz, to the aggregate amount of three hundred and sixty thousand (360,000) dollars, and issuing bonds therefor, and providing for the payment of the same;' underneath which shall be printed: 'To vote for or against refunding of the indebtedness, and providing for the payment of the same, stamp a cross (X) in the square to the right of and against the answer your desire to give;' underneath which shall be printed the following: 'For refunding the indebtedness, etc.,' to the right of which shall be printed two squares, the word 'Yes' in one square, with a blank square to the right of it, and the word 'No' in one square, with a blank square to the right of it.

"Qualified electors at said election desiring to assent to or accept the said proposition set forth in this ordinance of refunding the indebtedness of the city, issuing bonds therefor, and pro-
59 viding for the payment of the same, shall in voting stamp a cross (X) in a square to the right of the word 'Yes,' as printed upon said ballot. Qualified electors at said election desiring to reject said proposition, shall, in voting, stamp a cross in the square to the right of the word 'No,' as printed upon said ballot.

"SECTION 6. The special election hereby called shall be held and conducted, votes received and canvassed, and returns made, and results determined, according to the law governing municipal elections in this city, in the manner in which other elections are held in said city of Santa Cruz. The polls for such election shall be opened at sunrise in the morning of said day of election, and shall close at five o'clock p. m. of the same day.

"SECTION 7. The voting precincts, the places of election or polling places herein, are hereby established, created, and designated as nearly as possible the same as those so created and designated by said city council at and for the last municipal election held in said city on the eleventh day of April, 1892, and in accordance with law, and said voting precincts and polling places, respectively, and the officers to conduct said election in said city at each of said voting places, shall be, and they are hereby appointed and designated as follows, to wit:

"SECTION 8. The places for holding said election shall be as follows: In the first ward, at the Farmers' Union building, No. 195 Pacific avenue. In the second ward, at the St. Charles Hotel building, No. 13 Mission street. In the third ward, at the Young Men's Christian Association building, No. — Pacific avenue. In
60 the fourth ward, at Davis's building, northeast corner of Mission and Bay streets.

"SECTION 9. There are hereby appointed from the first ward: F. B. Curtis and Fred Barson as inspectors; F. P. Cooper and L. S. Harmon as judges; George A. Chittenden and Henry L. Carter as clerks; W. S. Fitch and George Birkenseer as ballot clerks of said election.

"For the second ward: Henry F. Kron and Peter R. Hines as inspectors; Edward Gilleran and U. S. Nichols as judges; Will E.

Grant and Edmund Jones as clerks; J. J. C. Leonard and Vincent Nolan as ballot clerks of said election.

"For the third ward: N. P. Ingalls, C. E. Huyck, as inspectors; John Morrow, W. M. Rennie, as judges; R. S. Miller, F. L. Stevens as clerks; T. J. Egan, Jos. M. Green, as ballot clerks of said election.

"For the fourth ward: Henry Schaw and A. Fridlay as inspectors; A. W. Bryant and W. H. Mason as judges; E. M. Silvey and J. B. Harris as clerks; L. L. Fargo and F. H. Carter as ballot clerks of said election.

"SECTION 10. The officers of election hereinbefore named and designated must, prior to entering upon their respective duties, each take the oath of office prescribed by law for such officers of State county, and municipal elections.

"In case any of the officers of election so designated and appointed shall fail to attend with, the qualified electors assembled shall fill their places by appointing other competent persons from among the qualified electors present.

61 "All returns of said special election shall be made out and signed by said officers of the special election, in the usual form, and deposited with the city clerk, as provided by law.

"SECTION 11. No person shall be entitled to vote at said election unless he be a qualified voter of the city of Santa Cruz.

"SECTION 12. If, upon the canvass of the returns of said election it shall be found that two-thirds of the voters thereat have voted in favor of refunding said indebtedness, issuing bonds therefor and providing for the payment of the same, then and thereafter said indebtedness shall be refunded, bonds issued therefor, and provision made for the payment of the same in the manner herein and as by law provided.

"SECTION 13. This ordinance shall take effect from and after its passage and approval.

"I hereby certify that the foregoing ordinance, No. 314, was passed and adopted by the city council of the city of Santa Cruz, at the meeting thereof held this twenty-sixth day of February, A. D. 1894, by the following votes: Ayes, Councilmen F. W. Lucas, J. Ho. Bailey, F. J. Hoffmann, E. G. Greene; noes, none; absent, none.

"O. J. LINCOLN,

"[SEAL.] *City Clerk of said City of Santa Cruz.*

"Approved this twenty-sixth day of February, A. D. 1894.

"WM. T. JETER, *Mayor.*

62 "Attest with the seal of said city:

"O. J. LINCOLN,

"[SEAL.] *City Clerk.*"

2. The original finding numbered 6 is amended so as to read as follows, to wit: 6. Ordinance No. 315, of said defendant city, dated February 26, 1894, provided for the notice to be given of said election referred to in finding No. 5, and directed the city clerk to cause to be published in the "Santa Cruz Surf" and "Santa Cruz Sentinel,"

for not less than ten days before the thirteenth day of March, 1894, the notice of said special election, and to post said notice at each place of election in said city; said ordinance further provided that the notice so to be published and posted should be substantially in the words and figures set out in said ordinance, and should contain, among other things, a recital of the indebtedness to be refunded, as set forth in the ordinance referred to in finding No. 5, together with the denomination, character, time of payment, rate of interest, as well as all other details, of the bonds proposed to be issued, and all of which matters were fully set forth and stated in the ordinance No. 315, of said defendant, together with notice that the polls of such election would be opened at sunrise in the morning of said day of election, and should close at five o'clock p. m. of the same day, the said time fixed for closing the polls being one hour and fifteen minutes before sunset, and at said election held on March 13, 1894, the polls were opened and closed at the hours named in said ordinance,
63 and more than two-thirds of the qualified electors of the said defendant voting at said special election, voted in favor of refunding the then outstanding bonded indebtedness of the said defendant, and also the refunding of the eighty-nine first-mortgage bonds theretofore issued by the said corporation, the City Water Company of Santa Cruz, but less than one-half of the qualified electors of said defendant voted at said election. Said ordinance numbered 315 is in the words and figures following, to wit:

"*Ordinance No.* 315.

"Ordinance providing for notice to be given of a special election in the city of Santa Cruz, to be held March 13, 1894, for the purpose of submitting to the qualified electors of said city the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same.

"Whereas, the common council of the city of Santa Cruz deems it for the best interests of said city of Santa Cruz to refund the bonded indebtedness of said city hereinafter recited, under the provisions of an act of the legislature of the State of California entitled 'An act to amend an act entitled "An act to authorize the common council, board of trustees, or other governing body of any incorporated town or city, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same" (approved March 15, 1893),' approved March 1, 1893, and the mayor and common council of said city of Santa Cruz did, on the sixth day of February, 1894, pass an ordinance (No. 314) calling a special election of, in, and for said
64 city of Santa Cruz, to be held on the thirteenth day of March, 1894, for the purpose of submitting to the qualified electors of said city of Santa Cruz the question of refunding the bonded indebtedness of said city of Santa Cruz, issuing bonds therefor, and providing for the payment of the same, which said ordinance is hereby specially referred to and made a part hereof.

"Now, therefore, the mayor and common council of said city of Santa Cruz, do ordain as follows, to wit:

"SECTION 1. The city clerk is hereby directed and ordered to cause to be published in the 'Santa Cruz Surf' and 'Santa Cruz Daily Sentinel,' newspapers published and printed in said city of Santa Cruz, in the county of Santa Cruz, for not less than ten (10) days before the thirteenth day of March, 1894, a notice of said special election, and to cause to be posted at each place of election hereinafter mentioned, in said city, a notice of said special election, which said notice so published and posted, shall be substantially in the words and figures following, viz:

"*Notice of Special Election.*

"To the qualified electors of the city of Santa Cruz, and to all whom it may concern:

"Notice is hereby given that a special election has been duly and regularly called, and will be held in and for the city of Santa Cruz, on Tuesday, the thirteenth day of March, 1894, at which there will be submitted to the qualified electors of said city the question of refunding the following bonded indebtedness of said city of Santa Cruz, issuing bonds therefor and providing for the payment of the same, viz:

"(1.) Four hundred and fifty (450) bonds (with interest thereon from January 15, 1894), dated January 15, 1889, of the denomination of five hundred (500) dollars each, bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz, under the provisions of an act of the legislature of the State of California, entitled, 'An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, incorporated under the laws of this State,' approved March 15, 1887, and which said bonds were heretofore sold by said city and the proceeds thereof used by said city in the purchase and construction of the city water works.

65

"(2.) Eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893), of the corporation, the City Water Company of Santa Cruz, heretofore issued by said corporation, the City Water Company, of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand (1,000) dollars each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are secured by a mortgage or deed of trust upon the property known as the city water works of Santa Cruz, executed by the City Water Company of Santa Cruz, as party of the first part therein, to the Holland Trust Company, of New York, as trustee, party of the second part therein, and which said bonds outstanding, were, at the time of the conveyance by the City Water Company of Santa Cruz to the city of Santa Cruz of the property known as the city water works, and now are, a valid lien and charge upon said property known as the city water works, and became thereby a part of the bonded indebtedness of the city of Santa Cruz; and

66 "(3.) Sixty-five (65) municipal improvement bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination of five hundred ($500) dollars, each, and twenty-six municipal improvement bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination of two hundred and fifty ($250) dollars each, all bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz, under and by virtue of a certain act of the legislature of the State of California, entitled 'An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, under the laws of this State') approved March 15, 1887.

"The denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued for the refunding of said indebtedness, are as follows:

"The said bonds shall be three hundred and sixty (360) in number, and of the denomination of one thousand (1,000) dollars each; and they shall bear interest at the rate of five (5) per cent. per annum, payable annually. They shall be of the character known as 'serials,' and shall be payable, principal and interest, in gold coin of the United States, in the manner following:

"One-fortieth ($\frac{1}{40}$) part of the principal of the indebtedness to be incurred in the issuing of said bonds shall be payable annually, to wit, the sum of nine thousand (9,000) dollars, together with the annual interest on all sums of said indebtedness then unpaid, and said principal and interest shall be payable each and every
67 year on a day to be fixed by the mayor and common council of said city, until the whole amount of said indebtedness is paid. The bonds to be issued shall be numbered consecutively from one (1) to three hundred and sixty (360), both inclusive, and shall be divided into forty (40) series, to be numbered consecutively from one (1) to forty (40), both inclusive, and consisting of nine (9) bonds each. The first series shall include those bonds which are numbered from one (1) to nine (9), both inclusive, and each succeeding series shall include the nine (9) bonds which are numbered consecutively after those included in the next preceding series.

"The bonds included in the first of said series shall be made payable on the fifteenth day of April, A. D. 1895, and all of the remaining series shall be made payable in consecutive order on the fifteenth day of April, in each succeeding calendar year thereafter, until and including the year 1934.

"Said bonds shall be made payable to bearer, and shall bear date sixteenth day of April, 1894, and shall be signed by the mayor and city clerk, and shall have affixed thereto the seal of the city of Santa Cruz. To each of said bonds there shall be attached interest coupons equal in number to the number of years which the bond has to run before its maturity. Each of said coupons shall represent a year's interest upon the principal amount of the bond, at the rate of five (5) per cent. per annum, viz: fifty ($50) dollars, and shall be payable on the fifteenth day of April in each calendar year.
68 Each coupon shall be made payable to bearer, and must bear the lithographed signatures of the mayor and city clerk.

"Said bonds shall be substantially in the following form:

"UNITED STATES OF AMERICA, *State of California.*

"*Bond of the City of Santa Cruz.*

"No. —. Series —. $1,00

"*Refunding Bond.*

"The City of Santa Cruz, a municipal corporation in the coun of Santa Cruz, State of California, is indebted to, and promises pay to the bearer, for value received, the sum of one thousa ($1,000) dollars, gold coin of the United States, on the fifteenth da of April, A. D. ——, with interest thereon in like gold coin, at t rate of five (5) per cent. per annum, payable annually on t 15th day of April of each calendar year from the date hereof, the office of the city treasurer of said city of Santa Cruz, on prese tation and surrender of the proper interest-bearing coupon here attached.

"And for the payment of the principal sum herein named, a the interest accruing thereon, the City of Santa Cruz is held a firmly bound, and its faith and credit and all the real and perso property of said city are hereby pledged for the prompt payme of this bond and interest at maturity.

"This bond is one of a series of bonds of like date, tenor, a effect, issued by the said City of Santa Cruz for the purpo
69 of refunding the bonded indebtedness of said city and iss ing bonds therefor, and providing for the payment of t same, under and in pursuance of, and in conformity with, the pr visions of an act of the legislature of the State of California, entitl 'An act to amend an act entitled "An act authorizing the comm council, board of trustees, or other governing body of any incorp rated city or town, other than cities of the first class, to refund its i debtedness, issue bonds therefor, and provide for the payment the same," (approved March 15, 1883),' approved March 1, 1893.

"And in pursuance of and in conformity with the constitution the State of California, and the ordinances of the city of Santa Cru and in pursuance of and in conformity with a vote of more tha two-thirds of all the qualified electors of said city of Santa Cru voting at a special election duly and legally called and held conducted in said city as provided under said act, on Tuesday, t 13th day of March, 1894, notice thereof having been duly a legally given and published in the manner as required by law, a after the result of said election had been canvassed, found and d clared in the manner and as required by law.

"And it is hereby certified and declared that all acts, condition and things required by law to be done precedent to and in the iss of said bonds, have been properly done, happened, and perform in legal and due form, as required by law. This bond ceases bear interest when due, unless presented for payment.

"In testimony whereof, the said City of Santa Cruz, by its
70 mayor and common council, has caused this bond to be signed by the mayor of said city of Santa Cruz, and attested by its said clerk, with the seal of said city attached, this sixteenth day of April, A. D. 1894.

"—— ——,

"*Mayor of the City of Santa Cruz.*

"[SEAL.]

"(Attest:) —— ——, *City Clerk.*

"The coupons attached to said bonds shall be substantially in the following form:

"Refunding bond number —. Coupon number —.

"The City of Santa Cruz will pay to bearer hereof, on the 15th day of April, A. D. ——, at the office of the city treasurer of said city, fifty ($50) dollars, gold coin of the United States, for interest on bond number —, issued 16th day of April, A. D. 1894.

"—— ——,

"*Mayor of the City of Santa Cruz.*

"—— ——, *City Clerk.*

"Said bonds shall be sold in such manner as may be provided by said common council, to the highest bidder, for not less than their face value, in gold coin of the United States. The proceeds of such sale shall be placed to the credit of the funding fund, and shall be applied only for the purpose of refunding the indebtedness for which said bonds shall have been issued.

71 "In case it shall be determined to refund said bonded indebtedness and issue bonds therefor, a sinking fund shall be created for the payment of the principal of the bonds evidencing said indebtedness of three hundred and sixty thousand ($360,000) dollars and interest thereon as follows:

"The common council shall, at the time of fixing the general tax levy for each year, and in the manner for such tax levy provided, levy and collect annually each year sufficient money to pay one-fortieth ($\frac{1}{40}$) part of the principal of such indebtedness, and also the annual interest on the portion remaining unpaid.

"Said clerk shall prepare for each ward in the city not less than one hundred tickets for every fifty or fraction of fifty electors registered in said ward, to be distributed to the qualified electors of each ward as by law provided.

"The ballots to be used at said election shall be of the same character as those prescribed by law to be used in other elections held in such city of Santa Cruz, and shall have printed thereon the following caption and heading setting forth the proposition to be voted upon, to wit:

"'Municipal ticket;' underneath which shall be printed the respective number of the ward in which said ticket is to be voted; underneath which shall be printed the following: 'Proposition for refunding bonded indebtedness of the city of Santa Cruz to the ag-

gregate amount of three hundred and sixty thousand ($360,000) dollars, and issuing bonds therefor, and providing for the payment of the same;' underneath which shall be printed, 'To vote
72 for or against refunding the indebtedness and issuing bonds therefor, and providing for the payment of the same, stamp a cross (X) in the square to the right of and against the answer you desire to give;' underneath which shall be printed the following: 'For refunding the indebtedness, etc.,' to the right of which shall be printed two (2) squares, the word 'Yes' in one square, with a blank square to the right of it, and the word 'No' in one square, with a blank square to the right of it.

"Qualified electors at said election desiring to assent to or accept the said proposition set forth herein for refunding the indebtedness of the city, issuing bonds therefor, and providing for the payment of the same, shall, in voting, stamp a cross (X) in the square to the right of the word Yes, as printed upon said ballot. Qualified electors at said election desiring to reject said proposition, shall, in voting, stamp a cross (X) in a square to the right of the word No, as printed upon said ballot.

"Said election shall be held and conducted, votes received and canvassed, and returns made and the results determined according to the law governing municipal elections, in said city, in the same manner in which other elections are held in said city of Santa Cruz. The polls of such election shall be opened at sunrise in the morning of said day of election, and shall close at five (5) o'clock p. m. of the same day.

"The voting precincts, places of election, and polling places at which polls will be opened in said city of Santa Cruz for the
73 purpose of voting at said election, and the officers of election designated and appointed to conduct the said election therein, are hereby established and defined and appointed as follows, to wit:

"SECTION 2. The places for holding said election shall be as follows: In the first ward, at the Farmers' Union building, No. 195 Pacific avenue. In the second ward, at the St. Charles Hotel building, No. 13 Mission street. In the third ward, at Young Men's Christian Association building, No. — Pacific avenue. In the fourth ward, at Davis's building, northeast corner of Mission and Bay streets.

"SECTION 3. There are hereby appointed for the first ward: F. B. Curtis and Fred Barson as inspectors; F. P. Cooper and L. S. Harmon, as judges; George A. Chittenden and Harry L. Carter, as clerks; W. S. Fitch and George Birkenseer, as ballot clerks of said election.

"For the second ward: Henry F. Kron and Peter R. Hinds, as inspectors: Edward Gilleran and U. S. Nichols, as judges; Will E. Grant and Edmund Jones, as clerks; J. J. C. Leonard and Vincent Nolan, as ballot clerks of said election.

"For the third ward: N. P. Ingalls and C. E. Huyck, as inspectors; John Morrow and W. M. Rennie, as judges; R. S. Miller and

F. L. Stevens, as clerks; T. J. Egan and Jos. M. Green, as ballot clerks of said election.

"For the fourth ward: Henry Schaw and A. Fridley, as inspectors; A. W. Bryant and W. H. Mason, as judges; E. M. Silvey and J. B. Harris, as clerks; L. L. Fargo and F. H. Parker, as ballot clerks of said election.

74 "The officers of election hereinbefore named and designated, must, prior to entering upon their respective duties, each take the oath of office prescribed by law for such officers of State, county, and municipal elections.

"In case any of the officers of election, so designated and appointed, shall fail to attend, those attending, with the qualified electors assembled, shall fill their *their* places by appointing other competent persons from among the qualified electors present.

"All returns of said special election shall be made out and signed by said officers of the special election in the usual form, and deposited with the city clerk, as provided by law.

"No person shall be entitled to vote at said election unless he be a qualified elector of the city of Santa Cruz.

"If, upon the canvass of the returns of said election, it be found that two-thirds of the votes voting thereat have voted in favor of refunding said indebtedness, issuing bonds therefor, and providing for the payment of the same, then and thereafter said indebtedness shall be refunded, bonds issued therefor, and provision made for the payment of the same, in the manner herein and as by law provided.

"SECTION 4. This ordinance shall take effect from and after its approval.

"I hereby certify that the foregoing ordinance was passed and adopted by the city council of the city of Santa Cruz, at a meeting thereof held this twenty-sixth day of February, A. D. 1894,

75 by the following votes: Ayes—Councilmen F. W. Lucas, J. Ho. Bailey, F. J. Hoffmann, E. G. Green. Noes—None. Absent—None.

"O. J. LINCOLN,

"[SEAL.] *City Clerk of said City of Santa Cruz.*

"Approved this twenty-sixth day of February, A. D. 1894.

"WILLIAM T. JETER, *Mayor.*

"Attest with seal of city.

"[SEAL.] O. J. LINCOLN, *City Clerk.*"

3. The original finding, No. 12, is amended by adding thereto the following: Prior to the purchase of the bonds by E. G. & E. Wallace, Messrs. F. H. Prince & Co. submitted to them a copy of the following opinion of Z. N. Goldsby, city attorney of the defendant, practicing law in the city of Santa Cruz, California, namely:

"SANTA CRUZ, CAL., *April* 25, 1894.

"I hereby certify that I have carefully examined all the steps taken and proceedings had relative to the issuance of $360,000, in five per cent. refunding bonds, by the city of Santa Cruz, in the

State of California, and the bonds issued pursuant thereto, dated April 16, 1894, and find said proceedings regular, and said bonds legally issued and a valid and binding obligation of said city of Santa Cruz.

"Z. N. GOLDSBY."

And, also, submitted a copy of the following opinion of L. B. Gleason, an attorney-at-law practicing in the city of New York, namely:

76 "Messrs. Coffin & Stanton, 72 Broadway, New York city.

"GENTLEMEN: I return you herewith certified copies of the proceedings of the officials of the city of Santa Cruz, Cal., with reference to the issuance of the refunding bonds of said city, bearing date April 16, 1894.

"I have made a careful examination of these papers, and of the constitution and statutes of the State of California, with reference to the issuance of refunding bonds by the cities of said State. All the provisions of the constitution and the statutes of the State seem to have been most carefully and fully complied with, and from my examination, I am of the opinion that these bonds are issued in pursuance of the laws relating thereto, and are legal and valid obligations of the said city of Santa Cruz.

"Yours truly, LAYFAYETTE B. GLEASON."

The copies of the opinion of Goldsby and of Gleason were furnished to F. H. Prince & Co., by Messrs. Coffin & Stanton. These opinions were not satisfactory to E. G. & E. Wallace, and they asked for the opinion of some attorney practicing law in the city of Boston. F. H. Prince & Co. thereupon suggested that the opinion of M. F. Dickinson, Jr., an attorney practicing in that city, should be obtained. This suggestion was satisfactory to E. G. & E. Wallace, and it was then agreed between F. H. Prince & Co. and E. G. & E.
77 Wallace that the opinion of said Dickinson, upon the question of the validity of said bonds, should be obtained by F. H. Prince & Co. F. H. Prince & Co. then, on their own account, and for themselves, and not acting as agents of E. G. & E. Wallace, employed said Dickinson to give his opinion in relation to the validity of such bonds, and as the result of such employment, and as the attorney of F. H. Prince & Co., Dickinson gave to F. H. Prince & Co. the following opinion, which was afterward, by F. H. Prince & Co., submitted to E. G. & E. Wallace, prior to their purchase of such bonds:

"BOSTON, *August* 29, 1894.

"F. H. Prince & Co., 2 and 8 State street, Boston, Mass.

"GENTLEMEN: I have examined the papers that you have submitted in regard to the $360,000 five per cent. refunding bonds of the city of Santa Cruz, Cal., dated April 16, 1894. In my opinion the bonds are legally issued in conformity to the laws of the State of

California, and the ordinances of the city of Santa Cruz, and constitute a legal and valid obligation of said city.

"Very respectfully yours, F. M. DICKINSON, JR."

Said Dickinson had notice of all the matters recited in the ordinances of the defendant city, numbered 314, 315, and 320, but Dickinson did not communicate his knowledge of said ordinances or of any of the facts recited therein, to the said firm of E. G. & E. Wallace; and the said Dickinson in the examination of said or-
78 dinances and in giving said opinion, was not the agent or attorney of E. G. & E. Wallace, but acted solely as attorney of F. H. Prince & Co.

4. That prior to the trial of this cause, and after the issues of fact therein had been made, the parties thereto, both plaintiff and defendant, by their attorneys of record, duly filed with the clerk a stipulation in writing waiving a jury, whereupon this cause was tried and determined by the court without the intervention of a jury.

It is further ordered that the foregoing findings shall have effect as if filed upon the date of September 29, 1898, and the same shall be read in connection with the original findings filed on said date, and shall be deemed a part thereof, and constitute a part of the record upon which the judgment herein is based.

Dated December 1, 1898.

JOHN J. DE HAVEN, *Judge.*

(Endorsed:) Filed December 1, 1898, *nunc pro tunc* as of September 29, 1898. Southard Hoffman, clerk.

79 UNITED STATES OF AMERICA:

In the United States Circuit Court in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
THE CITY OF SANTA CRUZ (a Corporation), Defendant. } No. 12094.

Judgment on Findings.

This cause came on regularly for trial, the parties appearing by their attorneys. A trial by jury having been expressly waived by stipulation signed by counsel for the respective parties, and filed herein, the cause was tried before the court, whereupon witnesses on the part of plaintiff and defendant were introduced, sworn, and testified; the evidence being closed, the cause was submitted to the court for consideration and decision, and after due deliberation thereon, the court filed its findings and decision in writing, and ordered that judgment be entered in accordance therewith.

Wherefore, by virtue of the law and the findings aforesaid, it is considered and adjudged that said Albert H. Waite, plaintiff, have and recover from said The City of Santa Cruz (a municipal corporation), defendant, the sum of twenty-two thousand nine hundred and

fifty dollars ($22,950), with interest thereon from April 15,
80 1895, to this date, together with the said plaintiff's costs and disbursements incurred in this action, amounting to the sum of $685.50.

Entered this twenty-ninth day of September, A. D. 1898.

SOUTHARD HOFFMAN, *Clerk.*

A true copy.

Attest:

[SEAL.] SOUTHARD HOFFMAN, *Clerk.*

(Endorsed:) Filed September 29, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

ALBERT H. WAITE
vs.
THE CITY OF SANTA CRUZ. } No. 12094.

Certificate to Judgment-roll.

I, Southard Hoffman, clerk of the circuit court of the United States, for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above entitled action.

81 Attest my hand and seal of the said circuit court, this twenty-ninth day of September, 1898.

SOUTHARD HOFFMAN, *Clerk,*

[SEAL.] By W. B. BEAIZLEY, *Deputy Clerk.*

In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
THE CITY OF SANTA CRUZ (a Corporation), Defendant. } No. 12094.

Opinion.

Chickering, Thomas & Gregory, for plaintiff.
James G. Maguire and Linsay & Cassin, for defendant.
Frank J. Sullivan, *amicus curiæ.*

DE HAVEN, *District Judge:*

This is an action at law to recover the sum of $23,100, claimed to be due on nine refunding bonds, and two hundred and eighty-two interest coupons of $50 each, attached to the same, and other refunding bonds, alleged to have been issued by the defendant
82 on the sixteenth day of April, 1894, payable on April 15, 1895. The action necessarily involves the validity of three hundred and sixty refunding bonds of $1,000 each, purporting to have been issued by the defendant on the sixteenth day of April,

1894. The circumstances under which these bonds were issued may be briefly stated as follows: On Feb. 26, 1894, the defendant, City of Santa Cruz, had an outstanding bonded indebtedness of $271,000, or thereabouts, and was also the owner of certain water works, and necessary appurtenances thereto, including land, water rights, etc., theretofore purchased by it from the City Water Company of Santa Cruz, a private corporation. The water works and appurtenant property were subject to a mortgage which had been placed thereon by the City Water Company of Santa Cruz, for the purpose of securing an outstanding bonded indebtedness of that corporation, in the sum of $89,000, and interest thereon; and on that day the common council of the defendant city, deeming it to be for the best interest of the defendant to refund its bonded indebtedness under the provisions of an act of the legislature of the State of California, entitled "An act to amend an act entitled 'An act to authorize the common council, board of trustees, or other governing body of an incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same,' approved March 15, 1883," approved March 1, 1893 (Stats. of 1893, page 59); adopted an ordinance, which was duly approved by the mayor, providing for a special election to be held in the city of Santa Cruz, on the thirteenth day of March, 1894, at which there should be submitted to its
83 qualified electors, the question of refunding the outstanding bonded indebtedness of the defendant city. The indebtedness which it was thus proposed to refund, was described in the ordinance as consisting not only of certain bonds of the city of Santa Cruz, amounting to the sum of $271,000, but, also: "Eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893), of the corporation, the City Water Company of Santa Cruz, heretofore issued by said corporation, the City Water Company of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand (1,000) dollars each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are secured by a mortgage or deed of trust upon the property known as the *as the* city water works of Santa Cruz, executed by the City Water Company of Santa Cruz, as party of the first part therein, to the Holland Trust Company of New York, as trustee, party of the second part therein; and which said bonds outstanding were, at the time of the conveyance by the City Water Company of Santa Cruz to the city of Santa Cruz, of the property known as the city water works, and now are, a valid lien and charge upon said property known as the city water works, and became thereby a part of the bonded indebtedness of the city of Santa Cruz."

More than two-thirds of the qualified electors of the defendant voted at the special election thus called, in favor of the proposition to refund the then outstanding bonded indebtedness of the defendant as described in the ordinance. Thereafter, on March 26, 1894, the common council of the defendant passed, and its mayor
84 approved, an ordinance for the purpose of carrying into effect the will of the electors of the defendant, as expressed at such

special election. This ordinance provided for the issuance of three hundred and sixty interest-bearing bonds of the defendant, of the denomination of $1,000 each, and, also, directed that such bonds should be signed by the mayor and city clerk; and should contain the following recitals:

"This bond is one of a series of bonds of like date, tenor and effect, issued by the said city of Santa Cruz for the purpose of refunding the bonded indebtedness of said city and issuing bonds therefor and providing for the payment of the same, under and — pursuance of, and in conformity with, the provisions of an act of the legislature of the State of California, 'An act to amend an act entitled "An act authorizing the common council, board of trustees or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor and provide for the payment of the same," (approved March 15, 1883),' approved March 1, 1893. And in pursuance of and in conformity with the constitution of the State of California, and the ordinance of the city of Santa Cruz, and in pursuance of and in conformity with a vote or more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election, duly and legally called and held and conducted in said city, as provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published in the manner as required by law, and after the result of said election
85 had been duly canvassed, found and declared in the manner required by law, and it is hereby certified and declared that all acts, conditions and things required by law to be done precedent to and in the issue of said bonds have been properly done, happened and performed in legal and due form and as required by law."

The ordinance further directed that such bonds should, after public notice inviting bids therefor, be sold to the highest bidder, for not less than their face value in United States gold coin, to be paid on delivery of said bonds at the city treasurer's office, in the city of Santa Cruz. The bonds were offered for sale, but there were no bidders for the same, and on April 16, 1894, the date to which the common council of the defendant had regularly adjourned, there were present Wm. T. Jeter, assuming to act as mayor, and J. Howard Bailey, F. J. Hoffmann, E. G. Green and F. W. Lucas, assuming to act as the common council of the defendant. At this meeting a proposition theretofore made by Coffin & Stanton to take all of said bonds was accepted upon condition that satisfactory security for its faithful performance by Coffin & Stanton, should be furnished. This proposition was dated February 27, 1894, and was in substance one by which Coffin & Stanton were to purchase the refunding bonds at par value, less three per cent., without the payment of any money at the time of their delivery, or giving any other consideration therefor, than their promise to take up the outstanding bonds, which were to be refunded, and to forward the same "from time to time to the city for cancellation." On April 23, 1894, the said Wm. T. Jeter, assuming to act as mayor, and the said Bailey, Hoffmann,
86 Green and Lucas, assuming to act as the common council of the defendant, publicly met pursuant to adjournment, and

without protest from any one, accepted and approved a bond presented by Coffin & Stanton, for the faithful performance by them of the agreement contained in the foregoing proposition, and thereupon directed the city clerk of the city of Santa Cruz to deliver to that firm the entire issue of the refunding bonds referred to. The bonds were, in accordance with this direction, delivered to Walter Stanton, of the firm of Coffin & Stanton, on April 24, 1894, and thereafter Coffin & Stanton sold the same to various parties, from some of whom the plaintiff derived title to the bonds and coupons sued on. The plaintiff is only the nominal owner of said bonds, the same having been assigned to him for the purpose of collection only. Coffin & Stanton never complied, in whole or in part, with the agreement under which the bonds were delivered to them, and the city of Santa Cruz never received any benefit whatever from their sale, the entire proceeds thereof having been appropriated by Coffin & Stanton, who are insolvent.

The bonds are under the seal of the defendant, contain the recitals set out, and are signed:

"WM. T. JETER,
"*Mayor of the City of Santa Cruz.*

"Attest: O. J. LINCOLN,
"*City Clerk.*"

Upon the foregoing facts, and others which will be hereafter stated, in discussing the questions to which they particularly relate, the defendant contends:

87 First. That the court has no jurisdiction of the action.

Second. That the act of the legislature, under which the bonds were issued, is in conflict with the constitution of the State of California.

Third. That Wm. T. Jeter was not mayor of the defendant city, neither *de jure* nor *de facto*, at the time when a portion of said bonds were signed by him.

Fourth. That the said Jeter and the other persons above mentioned, who on April 16 and 23, 1894, assumed to act as the mayor and common council of the defendant city, and accepted the proposition of Coffin & Stanton for the purchase of said bonds, and directed their delivery to that firm, were not officers of the defendant, neither *de jure* nor *de facto*, and all of their acts in relation thereto are absolutely void.

Fifth. That said bonds are void because issued in part for the purpose of refunding the private indebtedness of the City Water Company of Santa Cruz; and also because they were delivered to Coffin & Stanton in violation of law and of the ordinances under which they were issued.

Sixth. That the assignors of plaintiff had notice of all the foregoing facts relied upon as a defense to the action, when they purchased the bond and coupons sued on.

In answer to these contentions of the defendant, it is claimed in behalf of the plaintiff:

First. That the persons assuming to act as mayor and common

council of the defendant, on April 16, 1894, and April 23, 1894, were *de facto* officers of the defendant.

88 Second. That the assignors of plaintiff were *bona fide* purchasers of said bonds without notice, and that the defendant is therefore estopped from disputing the truth of the recitals contained in the bonds.

1. The objection that the court has no jurisdiction of the action, was presented by the demurrer to the complaint, and overruled by Judge McKenna, then presiding here. Waite *v.* City of Santa Cruz, 75 Fed., 967. That decision is, however, not necessarily controlling at this time, and as the objection is still insisted upon and has been argued with great earnestness, it is thought proper to again consider it. In support of this objection it is said the defendant did not contract to pay the bonds out of any property or assets subject to execution, but only out of taxes to be levied and collected by its officers, and from this it is argued that the action is substantially a proceeding in the nature of an application for a writ of mandamus to compel the officers of the defendant to perform the duty of levying and collecting the necessary taxes for the payment of such bonds, since without the issuance of such writ, a judgment in favor of plaintiff could not be enforced, and cases are cited to the effect that the circuit courts of the United States have no jurisdiction to entertain an original proceeding in mandamus. Bath County *v.* Amy, 13 Wall., 244; Graham *v.* Norton, 15 Wall., 427; Rosenbaum *v.* Bauer, 28 Fed., 200; S. C., 120 U. S., 455.

That circuit courts of the United States have no jurisdiction to entertain an original proceeding for the issuance of a writ of

89 mandamus to compel the officers of municipal corporations to perform duties imposed upon them by the laws of the State under which they exist, cannot be doubted, and is fully sustained by the above, and by many other cases which could be cited to the same effect. This, however, is not an original proceeding for the issuance of a writ of mandamus. The action is one at law for the purpose of recovering a money judgment, each of the bonds sued on containing a promise upon the part of the defendant "to pay to the bearer, for value received, the sum of one thousand dollars," etc. Of such an action this court has jurisdiction, the plaintiff being a citizen of another State and the amount in controversy exceeding $2,000 (Rev. Stat., sec. 629, as amended by act of Aug. 13, 1888, 25 U. S. Stats., 433). The cases of The County of Greene *v.* Daniel, and The County of Pickens *v.* Daniel, 102 U. S., 187, were not unlike this. These were actions at law to recover upon coupon bonds issued by the counties named, under the provisions of a statute of Alabama, the statute also making it the duty of certain officers to levy and collect a tax to pay the same. The question of the jurisdiction of the court was not raised, but in discussing the sufficiency of the complaint in that action, the court after stating that a mandamus would lie in the courts of the State of Alabama to compel the levying and collection of a tax to pay what was due on the bonds without first reducing the bonds to judgment, said:

"The rule is different, however, in the courts of the United States,

where such a writ can only be granted in aid of an existing jurisdiction. There a judgment at law on the coupons is necessary
90 to support such a writ. The mandamus is in the nature of an execution to carry the judgment into effect. Bath County *v.* Amy, 13 Wall., 244; Graham *v.* Norton, 15 *id.*, 427. Suit, therefore, to get judgment on the bonds or coupons is part of the necessary machinery which the courts of the United States must use in enforcing the claim, and the jurisdiction of those courts is not to be ousted simply because in the courts of the State a remedy may be afforded in another way."

In Heine *v.* The Levee Commissioners, 19 Wall., 655, the court, speaking by Mr. Justice Miller, point out that upon the refusal of a municipal corporation to pay its bonds, the appropriate way to proceed in the Federal courts is to first sue at law and obtain a judgment establishing the validity of the bonds, and then, if necessary, obtain a mandamus to enforce the judgment. This course was followed and upheld in the following, among many, cases which could be cited: Commissioners of Knox Co. *v.* Aspinwall *et al.*, 24 How., 376; Van Hoffman *v.* City of Quincy, 4 Wall., 535; Riggs *v.* Johnson County, 6 Wall., 166; Walkley *v.* City of Muscatine, 6 Wall., 481. A consideration of these cases, as well as section 629 of the U. S. Rev. Stats., above cited, leads to the conclusion that the present action is clearly within the jurisdiction of the court.

2. Cities of the first class (those having a population of more than 100,000) are expressly excepted from the operation of the statute under which the bonds were issued, and because of this exception the defendant insists that the statute is in conflict with subdivision 33 of section 25 of article IV of the constitution of the State
91 of California, which forbids the legislature to pass a local or special law in any case where a general law can be made applicable. A provision like this is to be found in the constitutions of many of the States, and has been the subject of much judicial discussion, and it seems to have been uniformly held by the courts that it is not to be construed as depriving the legislature of the power to enact laws applicable only to a particular class of persons or cities which may reasonably be thought to require rules or regulations different from those of other classes. Abeel *v.* Clark, 84 Cal., 226; McDonald *v.* Coniff, 99 Cal., 386; People *v.* Henshaw, 76 Cal., 436; People *v.* Central Pacific R. R. Co., 105 Cal., 576; State *v.* Pond, 93 Mo., 606; State *v.* Graham, 16 Neb., 74; Johnson *v.* City of Milwaukee, 60 N. W., 270; State *v.* Hawkins, 44 Ohio St., 98; Cooley's Con. Limitations, p. 390.

The constitution of the State of California recognizes the fact that it is wise to classify cities and towns with reference to population, so that legislation relating to their organization may be adapted to the interests or necessities of the different classes. Section 6 of article 11 of that constitution provides:

"Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to

population, of cities and towns, which laws may be altered, amended or repealed."

The word "organization" as here used has reference to the powers which may be given to municipal corporations, and it is
92 clear that by this section the legislature is authorized to provide different constitutions or charters for different classes of municipal corporations; that is, the legislature may in its discretion give to one class powers which are withheld from another. Now the statute under consideration here confers upon municipal corporations, other than those of the first class, the power to issue negotiable bonds for the purpose of refunding their outstanding indebtedness. The statute deals with a subject proper to be considered by the legislature in the organization of cities and towns in the first instance, or in subsequent legislation relating thereto. Viewed in this light it is apparent that the statute is not a special or local statute, within the meaning of the constitution prohibiting that character of legislation, and this conclusion is fully sustained by the cases above cited. The question is not whether it was wise to deny to municipal corporations of the first class power which by this statute is conferred upon all others. The statute is not to be declared unconstitutional simply because in the opinion of the court its provisions might well have been extended to all municipal corporations. To do this the court would be substituting its own judgment as to the wisdom and expediency of the statute for the judgment of the legislature, and this it is not authorized to do.

3. Is the action of Wm. T. Jeter in signing the bonds to be regarded as that of its mayor, and were the said Jeter and the persons who assumed to act as members of its common council and caused the bonds to be delivered to Coffin & Stanton, and thus put in circulation, *de facto* officers of the defendant?

These questions may be considered together. They are
93 very important, and have been most elaborately argued by the counsel for the respective parties. The facts out of which they arise are these: On April 11, 1892, Wm. T. Jeter was elected mayor of the defendant city, and J. Howard Bailey, J. F. Hoffmann, E. G. Green and F. W. Lucas were at the same time elected members of its common council, and all qualified and entered upon the duties of their respective offices. The charter of the city of Santa Cruz (Stats. of Cal. 1875–'6, page 189) provides that its mayor and common council shall hold office for a term of two years and until their successors are elected and qualified. On the ninth day of April, 1894, Robert Effey was elected mayor of the defendant city to succeed William T. Jeter; and Henry G. Ensnell, John Howard Bailey, J. D. Maher and Frank K. Roberts were at the same time elected members of the common council. Effey qualified as mayor between the hours of 11 o'clock a. m. and 2 o'clock p. m. of April 16, 1894, and those chosen councilmen qualified before the time fixed for holding the adjourned meeting of the common council of said city on the evening of the same day. In point of fact, the persons so elected mayor and members of the common council, on April 9, 1894, did not, with the exception of Bailey, who

was re-elected councilman, actually enter upon their duties as such officers until May 7, 1894. The said William T. Jeter, Bailey, Hoffmann, Green and Lucas continued to act as mayor and members of the common council of the city of Santa Cruz until May 7, 1894, without protest from any person, and held seven public meet-
94 ings of said council between and including the days of April 16, 1894, and May 7, 1894, and their proceedings were regularly recorded by the city clerk in the proper record books of the city. At one of these meetings, that of April 16, 1894, the proposition of Coffin & Stanton in relation to the purchase and sale of the bonds was accepted upon condition that they should furnish a satisfactory bond for the performance of their agreement, and at the succeeding meeting of April 23, 1894, the bond tendered by them for this purpose was approved, and the city clerk directed to deliver the bonds to them upon the terms of their agreement. This was done, and the bonds thus put in circulation. Many of the bonds so delivered to Coffin & Stanton were signed by William T. Jeter, assuming to act as mayor, on the afternoon of April 16, 1894, after the qualification of his successor, and whether the bonds sued on were among those signed by Jeter before or after the hour when his successor qualified, does not appear. It is claimed by the defendant that as it is not shown that the bonds sued on were signed by Wm. T. Jeter before the qualification of his successor in the office of mayor, the plaintiff has failed to prove that the bonds were signed by an officer authorized to do so, and they must therefore be held void even in the hands of *bona fide* purchasers under the rule declared in Coler *v.* Cleburne, 131 U. S., 162. That case is not authority for the proposition that the action of a *de facto* officer in signing bonds would not be as binding upon the municipality for which he assumes to act as that of an officer *de jure;* and it seems clear to me that if Jeter was the *de facto* mayor when he signed the bonds
95 sued on, then such signature by him was a compliance with the ordinance requiring them to be signed by the mayor; and so, also, if he was *de facto* mayor, and those assuming to act as the common council of the defendant were *de facto* members of the common council at the time when he and they assumed as mayor and common council to accept the proposition of Coffin & Stanton in relation to the bonds, and directed their delivery to that firm, then such acts upon their part are to be treated, so far as concerns the public and third persons having an interest in what was done by them, as the acts of the *de jure* mayor and common council of the city. The rule that the acts of a *de facto* officer are valid as to the public and third persons, is firmly established, although it is sometimes difficult to determine whether the evidence is such as to warrant a finding that a particular act or acts, the legality of which may be in issue in a given case, were those of a *de facto* officer. The contention of the defendant is that Jeter was not the *de facto* mayor at the time of the signing and delivery of *of* the bonds, nor were the old members of the common council, who continued to act as such after the qualification of their successors, and until after the bonds

were delivered to Coffin & Stanton, *de facto* members of the common council of defendant, after the qualification of their successors. Whether one was or was not a *de facto* officer at the time when he assumed to perform duties belonging to a public office, is a mixed question of law and of fact. State *ex rel.* Van Arminge *v.* Taylor, 108 N. C., 196; S. C., 12 L. R. A., 202; U. S. *v.* Alexander,
96 46 Fed., 728. And in passing upon the question presented by defendant's contention upon this point, it is necessary to first consider what facts are sufficient to constitute a *de facto* officer. A *de facto* officer may be defined as one whose title is not good in law, but who is in fact in the unobstructed possession of an office and discharging its duties in full view of the public, in such manner and under such circumstances as not to present the appearance of being an intruder or usurper. When a person is found thus openly in the occupation of a public office, and discharging its duties, third persons having occasion to deal with him in his capacity as such officer are not required to investigate his title, but may safely deal with him upon the assumption that he is a rightful officer. Thus it is said in Petersilea *v.* Stone, 119 Mass., 468:

"Third persons, from the nature of the case, cannot always investigate the right of one assuming to hold an important office, even so far as to see that he has color of title to it by virtue of some appointment or election. If they see him publicly exercising its authority, if they ascertain that this is generally acquiesced in, they are entitled to treat him as such officer, and, if they employ him as such, should not be subjected to the danger of having his acts collaterally called in question."

So, also, in Johns *v.* People, 25 Mich., 503, it is said:

"Persons in the actual and unobstructed exercise of office must be held to be legal officers, except in proceedings where their official character is the issue to be tried as against themselves."

97 To the same effect, also, may be cited the case of Attorney General *v.* Crocker, 138 Mass., 214. That case was one in which the validity of a town meeting election was involved, and the case turned upon the question whether one Crocker, assuming to act as town clerk at such town meeting, was an officer *de facto*. The appointment under which he acted was void, and there was an actual incumbency by him of the office, and acquiescence of the public in his assumption of its duties, only during the one meeting at which the election was conducted. These facts were deemed by the court sufficient to justify the conclusion that Crocker was reputed to be town clerk at that time, and a *de facto* officer in contemplation of law; and in concluding its opinion, the court thus declared the law to be:

"The public and parties having rights depending upon official acts are not so much concerned with the title to an office as they are that the duties of the office shall be performed, and the rights depending upon their performance secured and protected; and when they find an actual incumbent of an office performing its duties, they have a right to rely upon his acts as done by virtue of his office."

In Hamlin *v.* Kassafer, 15 Oregon, 456, it was held that a justice of the peace who continued in the discharge of the duties of such office after the expiration of the legal term for which he had been elected was to be regarded as a *de facto* officer. The court in that case said:

"To constitute a person an officer *de facto*, he must be in the actual possession of the office, and in the exercise of its functions and in the discharge of its duties. When this is the
98 fact necessarily, there can be no other incumbent of the office. An officer *de jure* is one who has the lawful right to the office, but who has either been ousted from, or never actually taken possession of the office."

In State *v.* Williams, 5 Wis., 308, it was held that a governor who continued to hold office illegally after the expiration of his term of office and the qualification of his successor, was a *de facto* governor, and that an act of the legislature approved by him during the time of his illegal incumbency of the office of governor was valid.

The case, however, which is most like this in its facts is that of Magenau & Brunner *v.* City of Fremont, 30 Neb., 843. That case was one involving the validity of an ordinance purporting to have been passed April 9, 1890, and it appeared that E. N. Morse and D. Hein were elected as councilmen of the city of Fremont on April 1, 1890, as the successors to J. J. Lowry and C. A. Peterson, and two days before the passage of the ordinance referred to had qualified as such councilmen, and upon such qualification became *de jure* members of the council. They did not, however, actually enter upon the duties of their office immediately upon qualifying, and Peterson and Lowry, notwithstanding the expiration of their terms of office, were present and acted as members of the council when the ordinance in question was passed. The court thus stated the question before it:

"It is conceded that all who participated at the meeting when the ordinance was adopted were legal members of the council except Peterson and Lowry, whose right to act is questioned on the
99 ground that their successors had previously qualified on April 7. The statute requires that two-thirds of all the members of the council shall be necessary to constitute a quorum for the transaction of business. It is obvious that if Peterson and Lowry could not lawfully act with the council at that meeting, no quorum was present, and the ordinance was invalid."

And after proceeding to show that under the laws of Nebraska the terms of Peterson and Lowry expired upon the qualification of their successors, the court said:

"While Morse and Hein had qualified, they had not, as yet, taken their seats in the council, or participated in the proceedings of that body. The names of Lowry and Peterson appeared upon the roll of members, and they were recognized as such by other members of the council, as well as by the mayor and city clerk. They took part in the proceedings of the council on April 9, without objection from any one, although Morse and Hein were at the time in the council chamber. We conclude, therefore, that Morse and Hein were *de*

jure officers, and that Lowry and Peterson were *de facto* members of the city council. The cases are numerous which hold that the acts of a *de facto* officer, so far as they involve the interests of the public, or third persons, are as valid and binding as though he was an officer *de jure*."

The foregoing cases sufficiently illustrate the principle upon which courts proceed in determining whether one who has assumed to act as a public officer was at the time an officer *de facto*, and it only remains to apply the rule which they establish to the
100 facts which have been already stated as appearing in the present case, and in doing so there is but one conclusion that can be reached, and that is that Jeter was the *de facto* mayor of the city of Santa Cruz, and on the sixteenth day of April, 1894, at the time when he signed the bonds in question, and he and the persons who assumed to act as members of its common council, on the sixteenth and twenty-third of April, 1894, were on those days the *de facto* mayor and the *de facto* members of the common council of the defendant city.

4. The issuance of bonds for the purpose of refunding the indebtedness of the City Water Company of Santa Cruz, a private corporation, was not authorized by the act under which the bonds in controversy purport to have been issued, and as the bonds issued by the defendant for that purpose were not segregated from others of the same issue, the court is not able to determine which particular bonds were to be devoted to the purpose of refunding the indebtedness of the private corporation, and the plaintiff is not entitled to recover in this action (Ætna Life Ins. Co. *v.* Lion Co., 44 Fed., 329, and Hedges *v.* Dixon Co., 150 U. S., 182), unless his contention that he is a *bona fide* purchaser without notice of this infirmity in the bonds, and as such is protected by the recitals contained therein, can be sustained.

First, as to the fact: Is the plaintiff a *bona fide* purchaser without notice? The plaintiff is only the nominal holder of the bonds and coupons sued on, they having been assigned to him for purposes of collection only. It therefore becomes necessary to determine whether his assignors, who are the real owners of such bonds and coupons, were purchasers without notice.

101 It is conceded that the Northern Counties Investment Trust Company, Limited, the owner of three of the coupons sued on, was not a *bona fide* purchaser. There are other assignors of plaintiff whose rights are disputed by defendant, but it is only deemed necessary to consider in this opinion whether Wallace & Co., who own eight of the nine bonds sued on, were *bona fide* purchasers without notice. It is not claimed that they had actual notice of any of the matters which defendant now urges against the validity of the bonds. The evidence shows that on or about September 22, 1894, this firm purchased from Coffin & Stanton one hundred and fifty of the refunding bonds referred to in the complaint in this action, giving in exchange therefor four hundred and thirty-five shares of the capital stock of the Page Belting Company and $116,400 in money. In making this exchange Wallace & Co.

were represented by F. H. Prince & Co., who were also at the same time acting for Coffin & Stanton, in the sale of the bonds. Prince & Co. received $2,500 from Wallace & Co. for services as their agents in the matter, and were also to receive from Coffin & Stanton, for services rendered them in the same transaction, a division of all profits which should be realized by Coffin & Stanton upon the resale of the stock of the Page Belting Company. Prior to effecting the exchange of these bonds for the sum of money above stated and the stock of the Page Belting Company, the ordinances under which the bonds were issued were placed in the hands of Prince & Co., for examination, but there is an entire absence of evidence upon the point whether the ordinances were in fact read by them, and
102 whatever the fact may be in relation to this, I do not think the plaintiff's right to recover is affected thereby. If it should be conceded that Prince & Co. had notice that the bonded indebtedness of the private corporation was described in the ordinances as a part of the bonded indebtedness of the defendant to be refunded by the issuance of the bonds in controversy, their knowledge was not communicated to Wallace & Co. The question then arises whether such knowledge, if possessed by Prince & Co., should be imputed to Wallace & Co. In my opinion, it should not.

To the general rule that notice to an agent while he is engaged in transacting business for his principal, of matters relating to such business, is notice to the principal, there is an exception which is as well settled as the rule itself. The exception is, that when in the transaction of business entrusted to him by his principal, the agent really acts for his own benefit or for the benefit and advantage of the other party to the transaction, notice to him is not deemed constructive notice to his principal. Benedict *v.* Arnoux, 154 N. Y., 715; Dillaway *v.* Butler, 135 Mass., 479; De Kay *v.* Hackensack Water Co., 38 N. J. Eq., 158. The facts of this case bring it clearly within the exception stated and applied in the cases just cited.

When an agent assumes to act upon account of his principal, and at the same time is to share in the profits which the other party to the contract may gain in the business transacted, the agent cannot be said to be acting in that matter in good faith towards his
103 principal, but he is really acting for himself as well as for the benefit and advantage of the other party with whom he is to share the profits. This was the position occupied by Prince & Co., in the transaction by which Wallace & Co. became purchasers of the bonds in suit, and such being the case, any knowledge possessed by them, showing that some of the bonds purchased were issued for a purpose not authorized by law, is not to be imputed to Wallace & Co.

It is further claimed by the defendant that Mr. M. F. Dickinson, one of the attorneys who passed upon the validity of the bonds, was also the agent of Wallace & Co. in that matter; that his opinion, given to Prince & Co., shows that he had the ordinances under which the bonds were issued before him; and that the knowledge which he obtained therefrom must be imputed to Wallace & Co. In passing upon this contention of defendant, it will be sufficient to

say that the evidence points to the fact that Mr. Dickinson was employed by Prince & Co. in the matter referred to, upon their own account, and not as the attorney of Wallace & Co. I do not overlook the fact which is strongly urged by defendant, that during the negotiations Wallace & Co. expressed themselves as not willing to rely upon the opinions of certain attorneys submitted to them by Prince & Co., concerning the validity of the bonds, and asked them for the opinion of Mr. Dickinson, but this circumstance is not inconsistent with the conclusion, which I think is sustained by a consideration of the entire evidence, that the opinion thereafter obtained from him was procured by Prince & Co. upon their
104 own account. The testimony of Sumner Wallace, of the firm of Wallace & Co., is that all of the legal opinions submitted to his firm, including that of Mr. Dickinson, were procured by Prince & Co., or by Coffin & Stanton. The only other witness giving evidence bearing upon the question is F. H. Prince, and he testified that Mr. Dickinson was employed by Prince & Co.; and there is nothing in his deposition from which the inference can be drawn that in the matter of employing Mr. Dickinson that firm was acting or supposed they were acting as agents of Wallace & Co., or that Dickinson was to be paid by the latter firm. Prince & Co. were directly interested in effecting the exchange of the Page Belting Company's stock for the bonds, by reason of the commission they were to receive from Wallace & Co., on the one side, and the profits they were to share with Coffin & Stanton on the other; and in view of this interest, it is not difficult to believe that after learning from Wallace & Co. that an opinion from Mr. Dickinson would be satisfactory to them, Prince & Co. may have obtained the opinion of that gentleman on their own account, so as to insure the success of the negotiations in which they were engaged. At any rate, the direct evidence of F. H. Prince is that Dickinson was employed by Prince & Co., and for the reasons stated I am disposed to regard this statement as true.

It is next insisted by defendant that Wallace & Co. must be deemed to have purchased such bonds with notice that they were issued in part to refund and take up the mortgage bonds of the private corporation, because each bond contained the recital
105 that it was issued "in pursuance to and in conformity with the constitution of the State of California, and the ordinances of the city of Santa Cruz."

The proposition for which the defendant contends upon this point is, that by this general reference to the ordinances of the city, all purchasers were put upon inquiry as to the terms of the ordinances under which the bonds were issued; and that as it appears from these ordinances that a part of the refunding issue was to be used in refunding the mortgage bonds of the private corporation, all persons purchasing the bonds are to be charged with notice of this fact. I do not think this contention can be sustained, although it is apparently supported by the case of Post *v.* Pulaski county, 49 Fed., 629, cited by the counsel for defendant. The recital above quoted does not stand alone. In addition to and immediately preceding

it, the bonds under consideration expressly state that they were "issued for the purpose of refunding the bonded indebtedness" of the city of Santa Cruz, and in conformity with the act of the legislature which they recite. The further statement that their issuance was also in conformity with the ordinances of the city of Santa Cruz, does not detract from or modify the effect of the prior recital concerning the purpose for which the bonds were issued, and certainly cannot be construed as a warning to purchasers to examine the ordinances and determine for themselves and at their peril whether the previous representation in relation to the purpose for which the bonds were issued was true or false. On the contrary, this general reference to the ordinances of the city of Santa Cruz must be
106 read in connection with the other parts of the instrument in which it is found, and when this is done and all the recitals are given effect, it is at once seen that they import not only that the bonds were issued in conformity with the act of the legislature, "but that the ordinances of the city council were in conformity with the statute."

Evansville *v.* Dennett, 161 U. S., 434; see also Hackett *v.* Ottawa, 99 U. S., 86, and the well-considered case of Risley *v.* Village of Howell, 64 Fed., 453.

5. In view of what has been said, the conclusion necessarily follows that Wallace & Co. were *bona fide* purchasers of the bonds and coupons assigned to plaintiff, and without notice of any infirmity attaching thereto. What effect, then, is to be given the recitals contained in the bonds? Is defendant estopped from disputing the truth of such recitals? The argument of counsel for defendant on this point is, that there was a total want of power in the mayor and common council of the defendant to refund the private indebtedness of the City Water Company of Santa Cruz; that in issuing bonds for that purpose these officers exceeded the authority conferred upon them by the statute, and their act in that respect was not merely an irregularity, but absolutely void, and that the defendant is not estopped by recitals contained in bonds thus issued without authority from showing that such recitals are false, and that the bonds were issued in part to refund the indebtedness of the private corporation and are therefore void. This argument has received, as it deserved, most careful consideration, and some
107 of the cases cited by counsel in its support will be referred to. In one of these, that of Hopper *v.* Covington, 118 U. S., 148, it was said:

"When the law confers no authority to issue the bonds in question, the mere fact of their issue cannot bind the town to pay them, even to a purchaser before maturity and for value." The court in the case just cited was not dealing with the question as to how far a *bona fide* purchaser of municipal bonds is protected by recitals contained therein, the bonds before it containing none. The entire scope of the decision in that case is, that it is incumbent upon a plaintiff suing upon bonds which contain no recitals, to state in his complaint the facts showing that the municipality was authorized

to issue the bonds. This appears very clearly from the opinion in which the court, in addition to the extract above quoted, said:

"The bonds in suit containing no statement of the purpose for which they were issued, and no recital which can bind the town by way of estoppel, any one suing upon the bond is bound to allege and prove the authority of the town to issue them." In Hayes *v.* Holly Springs, 114 U. S., 120, the validity of the bonds depended upon the fact that the town had been authorized to issue the same at a special election held for that purpose. The bonds upon their face recited that such election had been had, but in point of fact, at the time of the election there was no statute in existence which authorized it. Of course in such a case the purchaser of the bonds would be charged with notice of the non-existence of a statute authorizing the election, the authority of the city to issue its
108 bonds depending upon the existence of such a statute; and it was in respect to that state of facts that the court said:

"Even a *bona fide* holder of a municipal bond is bound to show legislative authority in the issuing body to create the bond. Recitals *in pais*, operating by way of estoppel, may cure irregularities in the execution of a statutory power, but they cannot create it. If, as in the present case, legislative authority was wanting, the bond has no validity." In Merrill *v.* Monticello, 138 U. S., 673, nothing more was decided than that the implied power of the town of Monticello to borrow money for corporate purposes did not carry with it the further power to issue negotiable bonds for the amount so borrowed. In Daviess County *v.* Dickinson, 117 U. S., 657, it was held that bonds issued by a county in excess of the amount authorized by law were void, and that the county was not estopped from making such defense as to the overissue by the unauthorized certificate of the county judge that the bonds were issued pursuant to the statute. The point of the decision in relation to the non-effect of the certificate referred to is contained in the following language:

"The certificate is not a recital in the bond. It is not the act of the county court, is not under its seal, nor signed by its clerk; but is simply the certificate of the person holding the office of judge of that court. Neither the statute, nor the vote of the people, nor the order of the county court, empowered him to make such a certificate, or to determine the question whether the county court had exceeded the power conferred upon it." Manifestly, that case is not authority upon the point now under discussion.

109 In Township of East Oakland *v.* Skinner, 94 U. S., 255, the question as to how far a municipality is estopped by recitals of matters of fact contained in negotiable bonds issued by it was not involved, and was neither decided nor discussed. The bonds upon which a recovery was sought in that case were issued to pay a subscription of the town of East Oakland in the State of Illinois to the capital stock of a railroad corporation. The constitution of Illinois prohibited the town from making such subscription, unless authorized by a vote of the people, and there was no statute providing for such an election. The bonds showed upon their face the purpose for which they were issued, and consequently carried notice to pur-

chasers that they were issued to pay a subscription prohibited by the constitution, because not authorized by any statute. It was in view of these facts that the court, in its opinion, used the general language relied upon by the defendant here, to the effect that there was a total want of authority in the town to issue them, and there could be no *bona fide* holding of such bonds. The case is the same in principle as that of Hayes *v.* Holly Springs, 114 U. S., 120, already mentioned.

The case at bar is in its facts entirely different from those to which reference has been made, and by reason of this there is a broad and clear principle of law to be applied to its decision, which was not involved in either of the cases above referred to. The statute under which the bonds in suit purport to have been issued authorized the defendant, upon conditions named therein, to issue bonds for
110 the purpose of refunding that part of its indebtedness evidenced by bonds and warrants. The authority thus given must be construed as one to issue negotiable bonds in the usual form (City of Cadillac *v.* Woonsocket Inst. for Savings, 58 Fed., 935; Ashley *v.* Board of Supervisors, 60 Fed., 55), with recitals showing their binding obligation; and there can be no doubt that if the recitals in these bonds are true, they are valid obligations of the defendant. In view, then, of the fact that there was legislative authority for the issuance by the defendant of bonds of the character of those sued on, what effect is to be given by the recital, that every act required by the statute as a condition precedent to their issuance was *pered;* and the further recital, that the bonds were issued for the precise and definite purpose prescribed by law, to wit, to refund the bonded indebtedness of the defendant? Can the defendant as against an innocent purchaser be permitted to defeat a recovery upon such bonds by showing the falsity of the recitals appearing upon their face? Upon the point presented by these questions there is great unanimity in the decisions of the Federal courts in holding that the effect of recitals like those contained in the bonds under consideration is to estop the municipality from averring against their truth, and the case falls clearly within the principle declared in Orleans *v.* Platt, 99 U. S., 682, in the following language:

"Where the bonds on their face recite the circumstances which bring them within the power, the corporation is estopped to deny the truth of the recital."

111 The decision in Hackett *v.* Ottawa, 99 U. S., 86, announces the same rule. In that case the defendant insisted that there was a total want of authority to issue the bonds upon which that action was based, because they were not issued for a municipal purpose, just as here the defendant contends that some of these bonds were not issued for the authorized municipal purpose of refunding its indebtedness, but to refund the private indebtedness of the City Water Company of Santa Cruz. The court, however, in that case held that inasmuch as the bonds recited that they were issued for a municipal purpose, the city was estopped from showing that such recital was untrue. The court said:

"The city is therefore estopped by its own representations to say, as against a *bona fide* holder of the bonds, that they were not issued or used for municipal or corporate purposes. It cannot now be heard, as against him, to dispute their validity. * * * It would be the grossest injustice, and in conflict with all past utterances of this court, to permit the city, having power under some circumstances to issue negotiable securities, to escape liability upon the ground of the falsity of its own representations, made through official agents and under its corporate seal, as to the purposes with which these bonds were issued."

The authority of these cases has never been questioned in any of the later decisions of the Supreme Court, and the principle upon which they were decided was reaffirmed in the case of Chaffee County *v.* Potter, 142 U. S., 355. The recital found in each
112 of the bonds sued on that it was issued for the purpose of refunding the bonded indebtedness of the city of Santa Cruz, is the statement of a fact and not the recital of a conclusion of law. When a municipality is authorized, as was the defendant here, to issue bonds containing recitals of matters of fact, showing that they were issued in accordance with law and for a purpose authorized by the law, the duty of ascertaining the truth of the facts recited must necessarily rest upon its officers; and that in such a case the municipality is estopped as against a *bona fide* holder from disputing the truth of the recitals contained in the bonds issued by it, is fully sustained by Commissioners of Knox County *v.* Aspinwall *et al.*, 21 How., 539; Chilton *v.* Town of Gratton, 82 Fed., 873; Sherman County *v.* Simons, 109 U. S., 735; Town of Coloma *v.* Eaves, 92 U. S., 484; Bernard's Township *v.* Morrison, 135 U. S., 523; Provident Trust Co. *v.* Mercer County, 170 U. S., 593; West Plains *v.* Sage, 69 Fed., 953; Risley *v.* Village of Howell, 64 Fed., 453; City of Huron *v.* Second Ward Savings Bank, 86 Fed., 272. The rule declared in these cases is founded upon principles of common honesty, which municipal corporations, as well as individuals and private corporations, must observe at their peril, because, as was said by the court in Bissell *et al. v.* City of Jeffersonville, 24 How., 287:

"A corporation quite as much as an individual, is held to a careful adherence to truth in their dealings with other parties, and cannot by their representations or silence involve others in onerous engagements, and then defeat the calculations and claims their
own conduct has superinduced." There are many other
113 objections urged by the defendant against the validity of the bonds which need not be noticed at length, as what has been said is decisive of the questions which they present. Thus, the objection that, assuming that all the bonds were issued for a municipal purpose, the issue was in excess of the amount authorized by the statute, even if true, cannot under the authority of Chaffee County *v.* Potter, 142 U. S., 355, be availed of as a defense in the face of the express recitals of the bonds, no one bond showing upon its face the total amount of bonds issued. So, also, in relation to the objection that the polls were not kept open during the entire time prescribed

by the statute when the question of issuing the bonds was voted upon by the people, it may be answered that this was a mere irregularity, of which it may be doubted whether the defendant could under any circumstance take advantage, in a collateral action like this, but clearly is estopped by the express recitals contained in the bonds from urging such a defense at this time. The same principle is applicable to the contention that the officers of the city violated the statute in delivering the bonds to Coffin & Stanton without the payment of any money and upon their simple promise to redeem certain outstanding bonds of the defendant and the City Water Company of Santa Cruz. Certainly the delivery of the bonds under such an agreement was a gross violation of the statute, but this is a matter which cannot be permitted to affect such of the assignors of the defendant as were *bona fide* purchasers without notice, as they had a right to rely upon the express recitals contained in the
114 bonds, to the effect that they were issued pursuant to the statute. In conclusion upon this point, it may be laid down as a general rule that when municipal bonds recite facts which, if true, show they were issued upon the conditions and for a purpose authorized by law, the *bona fide* purchaser, without notice of any infirmity therein, may safely rely upon such recitals. He owes no duty to the municipality, and is not required for his own protection to make an investigation for the purpose of ascertaining whether the recitals are true or false, unless the constitution of statute under which the bonds purport to have been issued expressly or by implication provide that he must look beyond the face of the bonds for the purpose of ascertaining the existence of the facts justifying their issuance. The cases of Dixon County *v.* Field, 111 U. S., 83; Lake County *v.* Graham, 150 U. S., 674, as explained in the later case of Chaffee County *v.* Potter, 143 U. S., 355, are not opposed to this conclusion; and the same also may be said of Sutliff *v.* Lake County Commissioners, 147 U. S., 230. The rule stated is founded not only upon principles of equity, but is also consistent with public policy, which seeks to give stability and value to this class of negotiable instruments, by inviting the confidence of *bona fide* purchasers for value. The law which determines what the judgment must be in this case is clear, and, in conclusion, what was said in Barnard's Township *v.* Morrison, 133 U. S., 523, may well be repeated here:

"Whatever may be the hardship of this particular case, to sustain the defenses pressed would go far towards destroying the market value of municipal securities."

115 Judgment must be entered in favor of the plaintiff for the amount demanded, less the sum of the three coupons as signed to plaintiff by the Northern Counties Investment Trust Company, Limited.

(Endorsed:) Filed September 29, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

Hon. J. J. De Haven, judge.

ALBERT H. WAITE, Plaintiff,
vs.
THE CITY OF SANTA CRUZ (a Corporation), Defendant. } No. 12094.

Bill of Exceptions.

Be it remembered, that the above-entitled action, coming on regularly for trial upon the second day of November, 1897, in the above-entitled court, before the court sitting without a jury, a jury trial having been by the parties duly waived by a stipulation in writing, in the words and figures following: "A jury trial in the above-entitled action is hereby waived," signed by the attorneys for the respective parties and duly filed with the clerk prior to the
116 commencement of the trial, William Thomas, Esq., and M. C. Sloss, Esq., appearing as attorneys for plaintiff, and James G. Maguire, Esq., and Carl A. Lindsay, Esq., appearing as attorneys for the defendant, the following proceedings were had, evidence received, rulings made and exceptions taken:

Mr. Thomas made an opening statement on behalf of plaintiff, and thereupon offered and read in evidence the following stipulation of counsel as to certain facts:

(Title of Court and Cause.)

Stipulation as to Certain Facts.

It is hereby stipulated and agreed by and between the parties to the above-entitled action that certain facts may be and are hereby taken, for the purposes of this action, to be true, and shall be regarded as proven, subject to all objections as to their materiality, without the introduction of any evidence thereon by either party. The facts so agreed to be proven and taken to be true are the following:

That the signatures of all the bonds and coupons sued on in this action are genuine.

That all of the bonds and coupons sued on in this action were, prior to the filing of the original complaint herein, duly assigned to the plaintiff, and that the legal title to all said bonds and coupons is in the plaintiff and was in the plaintiff at the time of the commencement of this action.

That the plaintiff did not pay any money consideration for
117 the assignment to him of any of said bonds or coupons, but all of said bonds and coupons were assigned to plaintiff for collection only.

That within ten days after the thirteenth day of April, 1892, William T. Jeter duly qualified as mayor and J. Howard Bailey, F. J. Hoffmann, E. C. Greene and F. W. Lucas duly qualified as councilmen, and O. J. Lincoln *only* qualified as city clerk of the defendant.

That in the minute book of the proceedings of the mayor and common council of the defendant, The City of Santa Cruz, appear the following entries, entered under the dates hereinafter particularly specified:

Second session of regular April meeting of the common council, April 13, 1892.

The common council met pursuant to adjournment.

Roll-call—present: His honor, G. Bowman, mayor; councilmen, Finkeldey, Young, Drullard, and the clerk.

It was upon motion voted that the council now proceed to canvass the returns of the charter election held April 11, A. D. 1892, which have been filed with the clerk; the seals of the several packages were examined by the council and found intact.

(At such canvass William T. Jeter received a plurality and was declared duly elected mayor of the city of Santa Cruz, and J. Howard Bailey, F. J. Hoffman, E. G. Greene and F. W. Lucas were duly elected councilmen, and G. J. Lincoln, city clerk.)

Approved.

G. BOWMAN, *Mayor.*

Attest: C. J. LINCOLN, *City Clerk.*

118 CITY OF SANTA CRUZ, *May* 2, 1892.

The mayor and common council elect having qualified as required by law, were conducted to their seats by the retiring board.

Roll-call—present: His honor, W. T. Jeter, mayor; councilmen, F. W. Lucas, J. H. Bailey, F. J. Hoffmann, E. G. Greene and the clerk.

Approved.

WM. T. JETER, *Mayor.*

Attest: C. L. LINCOLN, *City Clerk.*

Meeting of February 5, 1894. All present.

The proposition to refund the bonded indebtedness of the city of Santa Cruz and issue bonds therefor and provide for the payment of the same, under and according to the provisions of an act of the legislature approved March 1, 1893, was brought up for consideration and referred to the ordinance committee with a recommendation of the mayor to report thereon at the earliest practicable date.

Approved March 5, 1894.

WM. T. JETER, *Mayor.*

Attest: C. L. LINCOLN, *City Clerk.*

Meeting of February 19, 1894. All present.

Ordinance No. 314. An ordinance calling for a special
119 election and submitting to the qualified voters of the city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor and providing for the payment of the same, was read by the clerk and was referred by his honor the mayor to the ordinance committee.

Ordinance No. 315. An ordinance providing for notice to be

given of a special election in the city of Santa Cruz, to be held March 13, 1894, for the purpose of submitting to the qualified electors of said city the question of refunding the bonded indebtedness of said city, issuing bonds therefor and providing for the payment of the same, was read by the clerk and referred by his honor the mayor to the ordinance committee.

Approved March 5, 1894.

WM. T. JETER, *Mayor.*

Attest: C. J. LINCOLN, *City Clerk.*

Meeting of February 26, 1894. All present.

Ordinance No. 314, calling a special election and submitting to the qualified electors of the city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor and providing for the payment of the same, was reported favorably upon by the ordinance committee and read for the second time by the clerk; thereupon it was moved by Councilman Hoffmann, and seconded by Councilman Greene, that said ordinance be passed.

His honor, the mayor, put the motion to a vote, Councilmen
120 Lucas, Bailey, Hoffman and Greene voting "Aye;" thereupon his honor declared the motion carried and ordinance No. 314 duly passed.

Ordinance No. 315, providing for notice to be given of a special election in the city of Santa Cruz, to be held March 13, 1894, for the purpose of submitting to the qualified electors of said city the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same, was reported favorably upon by the ordinance committee and read for the second time by the clerk; thereupon it was moved by Councilman Bailey, and seconded by Councilman Lucas, that said ordinance be passed. His honor, the mayor, put said motion to a vote, Councilmen Lucas, Bailey, Hoffman and Greene voting "Aye;" thereupon his honor declared the motion carried, said ordinance No. 315 duly passed.

Approved March 5, 1894.

WM. T. JETER, *Mayor.*

Attest: O. J. LINCOLN, *City Clerk.*

Meeting of March 12, 1894. All present.

The ordinance committee presented the following resolution:

Resolved, That the great register of the county of Santa Cruz used at the last general election therein, be adopted as the register of the electors of and residing in the city of Santa Cruz, and to be used as such at the special election to be held in said city of
121 Santa Cruz on the thirteenth day of March, 1894, was read, and upon motion, etc, was adopted.

Approved April 2, 1894.

WM. T. JETER, *Mayor.*

Attest: O. J. LINCOLN, *City Clerk.*

Canvassing of Election Returns.

Meeting of March 15, 1894. All present.

The returns of the special election held on Tuesday, March 13, 1894, submitting to the qualified voters of the city of Santa Cruz the proposition of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same, having been legally and regularly made and filed by the city clerk, the said returns were now duly opened and canvassed by the mayor and common council, and the result was found to be as follows, viz:

Whole number of votes cast..... 595

	Yes.	No.
In the first ward:		
For refunding the indebtedness, etc.....	140	20
In the second ward:		
For refunding the indebtedness, etc..... ..	144	9
In the third ward:		
For refunding the indebtedness, etc	207	19
In the fourth ward:		
For refunding the indebtedness, etc.....	47	9
	538	57

122 It appearing to the mayor and council from the canvass of said returns that more than two-thirds of all the votes cast in said special election *was* for the proposition, to wit, that there *was* cast in favor of said proposition five hundred and thirty-eight votes and fifty-seven votes were cast against said proposition; *whereupon* his honor, the mayor, declared that the proposition for refunding bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000, and issuing bonds therefor and providing for the payment of the same, was carried by more than two-thirds of the qualified electors of the city of Santa Cruz voting at said election.

Ordinance No. 317, declaring the result of the special election, was read, and upon motion of Councilman Hoffman, seconded by Councilman Greene, it was voted to suspend the rules for the purpose of putting said ordinance upon its passage. It was now moved by Councilman Hoffman, and seconded by Councilman Greene, that ordinance No. 317 be passed. The motion was put to a vote by his honor, the mayor, Councilmen Lucas, Bailey, Hoffman and Greene voting "aye;" noes none. Thereupon the mayor declared the motion carried and ordinance No. 317 duly passed.

Approved April 2, 1894.

WM. T. JETER, *Mayor.*

Attest: O. J. LINCOLN, *City Clerk.*

123 *Canvassing of Election Returns.*

Meeting of March 19, 1894. All present.

The returns of the special election held on Tuesday, March 13, 1894, submitting to the qualified voters of the city of Santa Cruz the proposition of refunding the bonded indebtedness of said city, issuing bonds therefor and providing for the payment of the same, having been legally and regularly made and filed with the city clerk, the said returns were now duly opened and canvassed by the mayor and common council, and the result was found to be as follows, viz:

Whole number of votes cast..... 595

	Yes.	No.
In the first ward:		
For refunding the indebtedness, etc.....	140	20
In the second ward:		
For refunding the indebtedness, etc.....	144	9
In the third ward:		
For refunding the indebtedness, etc.....	207	19
In the fourth ward:		
For refunding the indebtedness, etc.....	47	9
	538	57

It appearing to the mayor and council from the canvass of said returns that more than two-thirds of all the votes cast at said special election *was* for the proposition, to wit, that there *was* cast in favor of said proposition five hundred and thirty-eight votes, and *thirty*-seven votes were cast against said proposition; thereupon his honor,

124 the mayor, declared that the proposition for refunding bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000, and issuing bonds therefor and providing for the payment of the same, was carried by more than two-thirds of the qualified electors of the city of Santa Cruz voting at said election.

Ordinance No. 318, declaring the result of the special election, was read, and upon motion of Councilman Hoffman, seconded by Councilman Greene, it was voted to suspend the rules for the purpose of putting said ordinance upon its passage. It was now moved by Councilman Greene and seconded by Councilman Bailey that ordinance No. 318 be passed. The motion was put to vote by his honor, the mayor, Councilmen Lucas, Bailey, Hoffman and Greene voting "aye;" noes, none. Thereupon the mayor declared the motion carried and ordinance No. 318 passed.

Approved April 2, 1894.

WM. T. JETER, *Mayor.*

Attest: O. J. LINCOLN, *City Clerk.*

Meeting of March 26, 1894. All present.

Ordinance No. 320, providing for refunding the bonded indebtedness of the city of Santa Cruz, issuing bonds therefor, and providing for the payment of the same, and for the sale and manner of sale of the bonds so issued, and directing the clerk to give notice inviting sealed proposals for the sale of bonds so issued, and also providing for the disposition of the funds derived from the sale of the bonds so issued, was read, and upon motion, duly made
125 and seconded, it was voted to suspend the rules for the purpose of putting ordinance No. 320 upon its passage. It was now ordered by Councilman Hoffman, and seconded by Councilman Greene, that said ordinance be passed. His honor put said motion to a vote, Councilman Lucas, Bailey, Hoffman, Greene voting "aye;" noes, none. Thereupon his honor declared the motion carried and ordinance No. 320 duly passed and adopted.

Approved April 2, 1894.

WM. T. JETER, *Mayor.*

Attest: O. J. LINCOLN, *City Clerk.*

Meeting of April 16, 1894. All present.

This being the time fixed for opening the proposals for the purchase of $360,000 of refunding bonds, and no bids having been filed, it was moved by Councilman Bailey and seconded by Councilman Greene that the proposition of Coffin and Stanton, dated February 27, 1894, to refund the city's indebtedness, be accepted upon satisfactory security and indemnity being given for the faithful performance of the same; said motion was carried by the following vote: "Aye," Councilmen Lucas, Bailey, Hoffman, and Greene; noes, none; and was so declared by his honor the mayor.

Approved May 5, 1894.

WM. T. JETER, *Mayor.*

Attest: —— ——, *City Clerk.*

126 Meeting of April 23, 1894. All present.

Walter Stanton now presented a bond of Coffin & Stanton, with the American Debenture Company of Chicago as surety, in sum of $360,000 for the faithful performance of a certain contract with the city dated February 27, 1894, which was read and submitted to the city attorney, said bond being approved by the attorney as to form, and it appearing to the board from the report of "Dunn's commercial agency" that the rating of said sureties was the highest given, and satisfactory to the council, it was moved by Councilman Bailey and seconded by Greene that said bond be accepted and approved; motion was carried by the following vote: "Aye," Councilman Lucas, Bailey, Hoffman, and Greene; noes, none.

The clerk was ordered to deliver said bonds to Coffin & Stanton.

Upon motion it was ordered that the contract of Coffin & Stanton to refund the city's indebtedness dated February 27, 1894, and accepted by the council April 16, 1894, be entered upon the minutes of the board, viz:

The city of Santa Cruz deciding to refund $225,000 in 5 per cent.

bonds, $89,000 in 6 per cent. mortgage bonds, $39,000 municipal improvement bonds, with accrued interest thereon, total $360,000, in 5 per cent. refunding bonds of the denomination of $1,000 each, legally issued under the act of the legislature of the State of California, approved March 1, 1893, advertising the sale of same and in the event of the city not securing satisfactory bids for such bonds at said sale, Coffin and Stanton agree to purchase said bonds
127 at par and accrued interest, contracting with the city to assume all obligations of interest and principal on the bonds to be refunded, making the refunding an assured fact from the date of the sale and delivery of the bonds to them.

The funds derived from the purchase of the $360,000 in said bonds to be deposited with Coffin & Stanton to the credit of the funding fund and to be used to take up and refund the outstanding bonds as above mentioned; Coffin & Stanton forwarded same from time to time to the city for cancellation, charging such bonds to the funding fund at par (100) with interest, to April 16, only.

Coffin & Stanton also agree to surrender and deliver to the city all bonds of the City Water Company outstanding over and above the $89,000 above mentioned, and to surrender and assign to and release said city from all claims and demands against said city of Santa Cruz under their contract with said city for construction of water works.

In consideration of the above agreement, the city, on its part, agrees to pay Coffin & Stanton 3 per cent. on the par value of the refunding bonds in the event of the city availing itself of its terms, on or before April 16, 1894.

Coffin & Stanton further agrees to purchase and furnish said city with blank bonds and coupons, these to be at their own cost and expense.

Dated at Santa Cruz, February 27, 1894.

(Signed) COFFIN & STANTON.

Witness to signature:
Z. N. GOLDSBY.

128 Approved May 5, 1894.

WM. T. JETER, *Mayor.*

Attest: C. J. LINCOLN, *City Clerk.*

Nothing contained in this stipulation shall be deemed to be a waiver on the part of the defendant of its objection that the proceedings held on April 16, 1894, and April 23, 1894, have no place in such minute book, or of the objection and contention on the part of the defendant that William T. Jeter was not the mayor and that Messrs. Lucas, Hoffman, and Greene were not members of the common council of the defendant at the date of such pretended meetings.

It is further stipulated that the signatures of William T. Jeter and O. J. Lincoln, wherever the same appear upon the said minutes of the proceedings of the said common council, as hereinabove specifically set forth, are genuine.

That in the ordinance book of the defendant The City of Santa Cruz, appears the following:

Ordinance No. 314.

An ordinance calling a special election, and submitting to the qualified electors of the city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor and providing for the payment of the same.

Whereas, the city of Santa Cruz has an outstanding indebtedness, evidenced by bonds of said city, as follows: (1) four hundred
129 and fifty (450) bonds (with interest thereon from January 15, 1894,) dated January 15, 1889, of the denomination of $500 each, bearing interest at the rate of five per cent. per annum, payable annually, issued by said city of Santa Cruz, under the provisions of an act of the legislature of the State of California, entitled "An act *of* authorizing the incurring of indebtedness by cities, towns or municipal incorporations, incorporated under the laws of this State," approved March 15, 1887, which said bonds were heretofore sold by said city and the proceeds thereof used by said city in the purchase and construction of the city water works.

(2.) Eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893) of the corporation, the City Water Company of Santa Cruz, heretofore issued by said corporation, the City Water Company of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand (1,000) dollars each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are secured by a mortgage or deed of trust upon the property known as the city water works of Santa Cruz, executed by the City Water Company of Santa Cruz, as party of the first part, therein, to the Holland Trust Company of New York, as trustee, party of the second part therein; and which said bonds outstanding were, at the time of the conveyance by the City Water Company of Santa Cruz to the city of Santa Cruz, of the property known as the city water works, and now are, a valid lien and charge upon said property known as the city water works, and become thereby a part of the bonded indebtedness of the city of Santa Cruz; and

130 (3.) Sixty-five (65) municipal improvement bonds (with interest thereon from January 3, 1894) dated September 3, 1887, of the denomination of five hundred (500) dollars; and twenty-six (26) municipal improvement bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination of two hundred and fifty (250) dollars each; all bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz, under and by virtue of a certain act of the legislature of the State of California, entitled, "An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, incorporated under the laws of this State," approved March 15, 1887.

And whereas, the common council of said city of Santa Cruz deem it for the best interest of said city of Santa Cruz, to refund

such indebtedness under the provisions of an act of the legislature of the State of California, entitled, "An act to amend an act, entitled 'An act to authorize the common council, the board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same,' approved March 15, 1883," approved March 1, 1893.

Now, therefore, the mayor and common council of the city of Santa Cruz do ordain as follows, to wit:

SECTION 1.

That a special election in and for the city of Santa Cruz, county of Santa Cruz, State of California, is hereby called and will
131 be held in said city on Tuesday, the thirteenth day of March, A. D. 1894, at which there will be submitted to the qualified electors of said city the question of refunding the bonded indebtedness of said city and issuing bonds therefor, and providing for the payment of the same.

SECTION 2.

The indebtedness of said city, which it is proposed to refund, is as follows:

(1.) Four hundred and fifty (450) bonds (with interest thereon from January 15, 1894), dated January 15, 1889, of the denomination of five hundred (500) dollars each, bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz under the provisions of an act of the legislature of the State of California, entitled "An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, incorporated under the laws of this State," approved March 15, 1887, which said bonds were heretofore sold by said city, and the proceeds thereof used by said city in the purchase and construction of the city water works.

(2.) Eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893) of the corporation, the City Water Company of Santa Cruz, heretofore issued by said corporation, the City Water Company of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand (1,000) dollars each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are securred by a mortgage or deed of trust upon the property known as the city water works
132 of Santa Cruz, executed by the City Water Company of Santa Cruz as party of the first part therein, to the Holland Trust Company of New York as trustee, party of the second part therein, and which said bonds outstanding were, at the time of the conveyance by the City Water Company of Santa Cruz to the city of Santa Cruz of the property known as the city water works, and now are, a valid lien and charge upon said property known as the city water works, and become thereby a part of the bonded indebtedness of the city of Santa Cruz; and

(3.) Sixty-five (65) municipal improvement bonds (with interest

thereon from January 3, 1894), dated September 3, 1887, of the denomination of five hundred (500) dollars each; and twenty-six (26) municipal improvement bonds (with interest thereon from January 3, 1894, dated September 3, 1887, of the denomination of two hundred and fifty (250) dollars each; all bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz, under and by virtue of a certain act of the legislature of the State of California, entitled, "An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, incorporated under the laws of this State," approved March 15, 1887.

The denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued for the refunding of said indebtedness are as follows:

The bonds to be issued shall be three hundred and sixty (360) in number, of the denomination of one thousand (1,000) dollars
133 each; they shall bear interest at the rate of five per cent. per annum, payable annually. They shall be of the character known as "serials," and shall be payable, principal and interest, in gold coin of the United States, in the manner following:

One-fortieth ($\frac{1}{40}$) part of the principal of the indebtedness to be incurred in the issuance of said bonds shall be payable annually, to wit: the sum of nine thousand (9,000) dollars, together with the annual interest on all sums of said indebtedness then unpaid, and said principal and interest shall be payable each and every year on a day to be fixed by the mayor and common council of said city, until the whole amount of said indebtedness is paid. The bonds to be issued shall be numbered consecutively from one to three hundred and sixty (360), both inclusive, and shall be divided into forty series, to be numbered consecutively from one (1) to forty (40), both inclusive, and consisting of nine (9) bonds each. The first series shall include those bonds which are numberrd from one to nine (9), both inclusive, and each succeeding series shall include the nine (9) bonds which are numbered consecutively after those included in the next preceding series.

The bonds included in the first of said series shall be made payable on the fifteenth day of April, A. D. 1885, and all of the remaining series shall be made payable in consecutive order on the fifteenth day of April, in each succeeding calendar year thereafter until and including the year 1934.

Said bonds shall be made payable to bearer and shall bear
134 date the sixteenth day of April, 1894, and shall be signed by the mayor and city clerk, and shall have affixed thereto the seal of the city of Santa Cruz. To each of said bonds there shall be attached interest coupons equal in number to the number of years which the bond has to run before its maturity. Each of said coupons shall represent a year's interest upon the principal amount of the bond, at the rate of five (5) per cent. per annum, viz: fifty (50) dollars, and shall be payable on the fifteenth day of April, in each calendar year. Each coupon shall be made payable to bearer, and must bear the lithographed signature of the mayor and city clerk.

Said bonds shall be substantially in the following form:

UNITED STATES OF AMERICA, *State of California.*

Bond of the City of Santa Cruz.

No. — Series —. $1,000.

Funding Bond.

The City of Santa Cruz, a municipal corporation, in the county of Santa Cruz, State of California, is indebted to, and promises to pay to the bearer, for value received, the sum of one thousand dollars (1,000) gold coin of the United States, on the fifteenth day of April, A. D. ——, with interest thereon, in like gold coin, at the rate of five per cent. per annum, payable annually on the fifteenth day of April of each calendar year from the date hereof, at the office of the city treasurer of said city of Santa Cruz, on presentation and surrender of the proper interest-bearing coupon thereto attached.

135 And for the payment of the principal sum herein named, and the interest accruing thereon, the said city of Santa Cruz is held and firmly bound, and its faith and credit and all the real and personal property of said city are hereby pledged for the prompt payment of this bond and interest at maturity.

This bond is one of a series of bonds of like date, tenor and effect, issued by the said city of Santa Cruz for the purpose of refunding the bonded indebtedness of said city and issuing bonds therefor, and providing for the payment of the same, under and in pursuance of, and in conformity with, the provisions of an act of the legislature of the State of California, entitled "An act to amend an act entitled 'An act authorizing the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same' (approved March 15, 1883)," approved March 1, 1893.

And in pursuance of and in conformity with the constitution of the State of California, and the ordinances of the city of Santa Cruz, and in pursuance of and in conformity with a vote of more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election duly and legally called and held and conducted, in said city, as provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published in the manner as required by law, and after the result of said election had been canvassed, found and declared in the manner and as required by law.

136 And it is hereby certified and declared that all acts, conditions, and things required by law to be done precedent to and in the issue of said bonds have been properly done, happened, and performed in legal and due form, as required by law. This bond ceases to bear interest when due, unless presented for payment.

In testimony whereof, the said City of Santa Cruz, by its mayor and common council, has caused this bond to be signed by the

mayor of said city of Santa Cruz, and attested by its clerk, with the seal of said city attached, this sixteenth day of April, A. D. 1894.

—— ——,

Mayor of the City of Santa Cruz.

[SEAL.]

Attest: —— ——, *City Clerk.*

The coupons attached to said bonds shall be substantially in the following form:

Refunding bond number —. Coupon number —.

The City of Santa Cruz will pay to bearer hereof, on the fifteenth day of April, A. D. ——, at the office of the city treasurer of said city, fifty (50) dollars, gold coin of the United States, for interest on bond number —, issued sixteenth day of April, A. D. 1894.

——— ———,

Mayor of the City of Santa Cruz.

—— ——, *City Clerk.*

137 SECTION 3.

Said bonds shall be sold in such manner as may be provided by said common council, to the highest bidder, for not less than their face value, in gold coin of the United States. The proceeds of such sale shall be placed to the credit of the funding fund, and shall be applied only for the purpose of refunding the indebtedness for which said bonds shall have been issued.

SECTION 4.

In case it shall be determined to refund said bonded indebtedness and issue bonds therefor, a sinking fund shall be created for the payment of the principal of the bonds evidencing said indebtedness of three hundred and sixty thousand (360,000) dollars and the interest thereon as follows:

The common council shall, at the time of fixing the general tax levy for each year, and in the same manner for such tax levy provided, levy and collect annually each year sufficient money to pay one-fortieth part of the principal of such indebtedness, and also the annual interest on the portion remaining unpaid.

SECTION 5.

That said clerk shall prepare for each election precinct or ward in the city not less than one hundred (100) tickets for every fifty (50) or fraction of fifty (50) electors registered in such ward, to be distributed to the qualified electors of each ward as by law provided.

The ballots to be used at said election shall be of the same character as those prescribed by law to be used in other elections
138 held in such city of Santa Cruz, and have printed thereon the following caption and heading setting forth the proposition to be voted upon, to wit: "Municipal ticket;" underneath which shall be printed the respective number of the precinct or ward in which said ticket is to be voted; underneath which shall

be printed the following: "Proposition for refunding bonded in debtedness of the city of Santa Cruz to the aggregate amount three hundred and sixty thousand (360,000) dollars and issuin bonds therefor, and providing for the payment of the same;" unde neath which shall be printed, "To vote for or against refunding th indebtedness and issuing bonds therefor, and providing for the pay ment of the same, stamp a cross (X) in the square to the right and against the answer you desire to give;" underneath which shal be printed the following: "For refunding the indebtedness," etc., t the right of which shall be printed two squares, the word "Yes" i one square, with a blank square to the right of it, and the wor "No" in one square, with a blank square to the right of it.

Qualified electors at said election desiring to assent to or accep the said proposition set forth in this ordinance of refunding the in debtedness of the city, issuing bonds therefor, and providing for th payment of the same, shall in voting stamp a cross (X) in th square to the right of the word "Yes," as printed upon said ballo Qualified electors at said election desiring to reject said proposition shall in voting stamp a cross in the square to the right of the wor "No" printed upon said ballot.

139 SECTION 6.

The special election hereby called shall be held and conducted votes received and canvassed, and returns made and the results de termined according to the law governing municipal elections i this city, in the manner in which other elections are held in sai city of Santa Cruz. The polls for such election shall be opened a sunrise in the morning of said day of election, and shall close at fiv o'clock p. m. of the same day.

SECTION 7.

The voting precincts, the places of election or polling place herein are hereby established, created and designated as nearly a possible the same as those *to* created and designated by said cit council at and for the last municipal election held in said city o the eleventh day of April, 1892, and in accordance with law, an said voting precincts and polling places respectively, and the officer to conduct said election in said city at each of said voting precinct respectively shall be, and they are hereby appointed and desig nated as follows, to wit:

SECTION 8.

The places for holding said election shall be as follows:

In the first ward, at Farmers' Union building, No. 195 Pacifi avenue.

In the second ward, at the St. Charles Hotel building, No. 1 Mission street.

In the third ward, at the Young Men's Christian Association building, No. — Pacific avenue.

In the fourth ward, at Davis' building, northeast corner of Mis sion and Bay streets.

140 SECTION 9.

There are hereby appointed for the first ward:
F. B. Curtis and Fred Barson as inspectors.
F. P. Cooper and L. S. Harmon as judges.
George A. Chittenden and Harry L. Carter as clerks.
W. S. Fitch and George Birkenseer as ballot clerks of said election.
For the second ward:
Henry F. Kron and Peter R. Hinds as inspectors.
Edward Gilleran and U. S. Nichols as judges.
Will E. Grant and Edmund Jones as clerks.
J. J. C. Leonard and Vincent Nolan as ballot clerks of said election.
For the third ward:
N. P. Ingals, C. E. Huyck, as inspectors.
John Morrow, Wm. Rennie, as judges.
R. S. Miller, F. L. Stevens, as clerks.
T. J. Egan, Jos. M. Green, as ballot clerks of said election.
For the fourth ward:
Henry Schaw and A. Fridley as inspectors.
A. W. Bryant and W. H. Mason as judges.
E. M. Silvey and J. B. Harris as clerks.
L. L. Fargo and F. H. Parker as ballot clerks of said election.

SECTION 10.

The officers of the election hereinbefore named and designated must, prior to entering upon their respective duties, each take the oath of office prescribed by law for such officers of State, county, and municipal elections.

141 In case any of the officers of election so designated and appointed shall fail to attend with the qualified electors — assembled shall fill their places by appointing other competent persons from among the qualified electors present.

All returns of said special election shall be made out and signed by said officers of the special election in the usual form and deposited with the city clerk, as provided by law.

SECTION 11.

No person shall be entitled to vote at said election unless he be a qualified voter of the city of Santa Cruz.

SECTION 12.

If, upon the canvass of the returns of said election it be found that two-thirds of the voters thereat have voted in favor of refunding said indebtedness, issuing bonds therefor and providing for the payment of the same, then and thereafter said indebtedness shall be refunded, bonds issued therefor and provision made for the payment of the same, in the manner herein and as by law provided.

SECTION 13.

This ordinance shall take effect from and after its passage and approval.

I hereby certify that the foregoing ordinance No. 314 was passed and adopted by the city council of the city of Santa Cruz at the meeting thereof held this twenty-sixth day of February, A. D. 1894,
142 by the following votes: Ayes, Councilmen F. W. Lucas, J. Ho. Bailey, F. J. Hoffman, E. G. Greene; noes, none; absent, none.

O. J. LINCOLN,
[SEAL.] *City Clerk of said City of Santa Cruz.*

Approved this twenty-sixth day of February, A. D. 1894.
WILLIAM T. JETER, *Mayor.*

Attest with the seal of said city:
[SEAL.] O. J. LINCOLN, *City Clerk.*

Ordinance No. 315.

Ordinance providing for notice to be given of a special election in the city of Santa Cruz, to be held March 13, 1894, for the purpose of submitting to the qualified electors of said city the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same.

Whereas, the common council of the city of Santa Cruz deems it for the best interests of said city of Santa Cruz to refund the bonded indebtedness of said city hereinafter recited, under the provisions of an act of the legislature of the State of California, entitled "An act to amend an act entitled, 'An act to authorize the common council, board of trustees, or other governing body of any incorporated town or city, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same' (approved March 15, 1883)," approved March 1, 1893, and the mayor and common council
143 of said city of Santa Cruz did on the sixth day of February, 1894, pass an ordinance (No. 314) calling for a special election of, in and for said city of Santa Cruz, to be held on the thirteenth day of March, 1894, for the purpose of submitting to the qualified electors of said city of Santa Cruz the question of refunding the bonded indebtedness of said city of Santa Cruz, issuing bonds therefor, and providing for the payment of the same, which said ordinance is hereby specially referred to and made a part hereof.

Now, therefore, the mayor and common council of said city of Santa Cruz do ordain as follows, to wit:

SECTION 1.

The city clerk is hereby directed and ordered to cause to be published in the "Santa Cruz Surf" and "Santa Cruz Daily Sentinel," newspapers published and printed in said city of Santa

Cruz, in the county of Santa Cruz, for not less than ten (10) days before the thirteenth day of March, 1894, a notice of said special election, and to cause to be posted at each place of election, hereinafter mentioned, in said city, a notice of said special election, which said notice so published and posted shall be substantially in the words and figures following, to wit:

Notice of Special Election.

To the qualified electors of the city of Santa Cruz, and to all whom it may concern:

Notice is hereby given that a special election has been duly and regularly called and will be held in and for the city of Santa
144 Cruz, on Tuesday, the thirteenth day of March, 1894, at which there will be submitted to the qualified electors of said city the question of refunding the following bonded indebtedness of said city of Santa Cruz, issuing bonds therefor, and providing for the payment of the same, viz:

(1.) Four hundred and fifty (450) bonds (with interest thereon from January 15, 1894), dated January 15, 1889, of the denomination of five hundred (500) dollars each, bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz, under the provisions of an act of the legislature of the State of California, entitled, "An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, incorporated under the laws of this State," approved March 15, 1887; and which said bonds were heretofore sold by said city and the proceeds thereof used by said city in the purchase and construction of the city water works.

(2.) Eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893) of the corporation, the City Water Company, of Santa Cruz, heretofore issued by said corporation, the city water works, of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand (1,000) dollars each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are secured by a mortgage or deed of trust upon the property known as the city water works of Santa Cruz, executed by the City Water Company of Santa Cruz as party of the first part therein, to the Holland Trust Company of
145 New York as trustee, party of the second part therein, and which said bonds outstanding, were, at the time of the conveyance by the City Water Company of Santa Cruz to the city of Santa Cruz of the property known as the city water works, and now are, a valid lien and charge upon said property known as the city water works, and became thereby a part of the bonded indebtedness of the city of Santa Cruz; and

(3.) Sixty-five (65) municipal improvement bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination of five hundred ($500) dollars, each; and twenty-six municipal improvement bonds (with interest thereon from January 3, 1894), dated September 3, 1887, of the denomination

of two hundred and fifty ($250) dollars each, all bearing interest at the rate of five (5) per cent. per annum, payable annually, issued by said city of Santa Cruz, under and by virtue of a certain act of the legislature of the State of California, entitled, "An act authorizing the incurring of indebtedness by cities, towns, or municipal incorporations, under the laws of this State," approved March 15, 1887. The denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued for the refunding of said indebtedness, are as follows:

The said bonds shall be three hundred and sixty (360) in number, and of the denomination of one thousand (1,000) dollars each; and they shall bear interest at the rate of five (5) per cent. per annum, payable annually. They shall be of the character known as "serials," and shall be payable, principal and interest, in gold coin of the United States, in the manner following:

146 One-fortieth ($\frac{1}{40}$) part of the principal of the indebtedness to be incurred in the issuing of said bonds shall be payable annually, to wit, the sum of nine thousand ($9,000) dollars, together with the annual interest on all sums of said indebtedness then unpaid, and said principal and interest shall be payable each and every year on a day to be fixed by the mayor and common council of said city until the whole amount of said indebtedness is paid. The bonds to be issued shall be numbered consecutively from one (1) to three hundred and sixty (360), both inclusive, and shall be divided into forty (40) series, to be numbered consecutively from one (1) to forty (40), both inclusive, and consisting of nine (9) bonds each. The first series shall include those bonds which are numbered from one (1) to nine (9), both inclusive, and each succeeding series shall include the nine (9) bonds which are numbered consecutively after those included in the next preceding series.

The bonds included in the first of said series shall be made payable on the fifteenth day of April, A. D. 1895, and all of the remaining series shall be made payable in consecutive order on the fifteenth day of April, in each succeeding calendar year thereafter, until and including the year 1934.

Said bonds shall be made payable to bearer, and shall bear date the sixteenth day of April, 1894, and shall be signed by the mayor and city clerk, and shall have affixed thereto the seal of the city of Santa Cruz. To each of said bonds there shall be attached interest coupons equal in number to the number of years which the bond

147 has to run before its maturity. Each of said coupons shall represent a year's interest upon the principal amount of the bond, at the rate of five (5) per cent. per annum, viz: fifty ($50) dollars, and shall be payable on the fifteenth day of April in each calendar year. Each coupon shall be made payable to bearer, and must bear the lithographed signatures of the mayor and city clerk.

Said bonds shall be substantially in the following form:

UNITED STATES OF AMERICA, *State of California.*

Bond of the City of Santa Cruz.

No. —. Series —. $1,000.

Refunding Bond.

The City of Santa Cruz, a municipal corporation in the county of Santa Cruz, State of California, is indebted to, and promises to pay to the bearer, for value received, the sum of one thousand (1,000) dollars, gold coin of the United States, on the fifteenth day of April, A. D. ——, with interest thereon in like gold coin, at the rate of five (5) per cent. per annum, payable annually on the fifteenth day of April of each calendar year from the date hereof, at the office of the city treasurer of said city of Santa Cruz, on presentation and surrender of the proper interest-bearing coupon hereto attached.

And for the payment of the principal sum herein named, and the interest accruing thereon, the said City of Santa Cruz is held and firmly bound, and its faith and credit and all the real and
148 personal property of said city are hereby pledged for the prompt payment of this bond and interest at maturity. This bond is one of a series of like date, tenor, and effect, issued by the said city of Santa Cruz for the purpose of refunding the bonded indebtedness of said city and issuing bonds therefor, and providing for the payment of the same, under and in pursuance of, and in conformity with the provisions of an act of the legislature entitled "An act authorizing the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same," (approved March 15, 1883), approved March 1, 1893.

And in pursuance of and in conformity with the constitution of the State of California, and the ordinances of the city of Santa Cruz, and in pursuance of and in conformity with a vote of more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election duly and legally called and held and conducted in said city as provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published in the manner as required by law, and after the result of said election had been canvassed, found and declared in the manner and as required by law.

And it is hereby certified and declared that all acts, conditions, and things required by law to be done precedent to and in the issue of said bonds, have been properly done, happened, and performed in legal and due form, as required by law. This bond ceases to bear interest when due, unless presented for payment.

149 In testimony whereof, the said city of Santa Cruz, by its mayor and common council, has caused this bond to be signed by the mayor of said city of Santa Cruz and attested by its

said clerk, with the seal of said city attached, this sixteenth day of April, A. D. 1894.

——— ———,
Mayor of the City of Santa Cruz.

[SEAL.]
Attest: ——— ———, *City Clerk.*

The coupons attached to said bonds shall be substantially in the following form:

Refunding bond number —. Coupon number —.

The City of Santa Cruz will pay to bearer hereof, on the fifteenth day of April, A. D. ———, at the office of the city treasurer of said city, fifty ($50) dollars, gold coin of the United States, for interest on bond numbered —, issued sixteenth day of April, A. D. 1894.

——— ———,
Mayor of the City of Santa Cruz.
——— ———, *City Clerk.*

Said bonds shall be sold in such manner as may be provided by said common council, to the highest bidder, for not less than their face value, in gold coin of the United States. The proceeds of such sale shall be placed to the credit of the funding fund and
150 shall be applied only for the purpose of refunding the indebtedness for which said bonds shall have been issued.

In case it shall be determined to refund said bonded indebtedness and issue bonds therefor, a sinking fund shall be created for the payment of the principal of the bonds evidencing said indebtedness of three hundred and sixty thousand ($360,000) dollars, and interest thereon, as follows:

The common council shall, at the time of fixing the general tax levy for each year, and in the same manner for such tax levy provided, levy and collect annually each year sufficient money to pay one-fortieth ($\frac{1}{40}$) part of the principal of such indebtedness, and also the annual interest on the portion remaining unpaid.

Said clerk shall prepare for each ward in the city not less than one hundred tickets for every fifty or fraction of fifty electors registered in said ward, to be distributed to the qualified electors of each ward as by law provided.

The ballots to be used at said election shall be of the same character as those prescribed by law to be used in other elections held in such city of Santa Cruz, and shall have printed thereon the following caption and heading, setting forth the proposition to be voted upon, to wit:

"Municipal ticket," underneath which shall be printed the respective number of the ward in which said ticket is to be voted; underneath which shall be printed the following: "Proposition for refunding bonded indebtedness of the city of Santa Cruz, to the aggregate amount of three hundred and sixty thousand ($360,000) dollars, and issuing bonds therefor and providing for the
151 payment of the same;" underneath which shall be printed: "To vote for or against refunding the indebtedness and

issuing bonds therefor, and providing for the payment of the same, stamp a cross (X) in the square to the right of and against the answer you desire to give;" underneath which shall be printed the following: "For refunding the indebtedness," etc., to the right of which shall be printed two (2) squares, the word "Yes" in one square, with a blank square to the right of it, and the word "No" in one square, with a blank square to the right of it.

Qualified electors at said election desiring to assent to or accept the said proposition set forth herein for refunding the indebtedness of the city, issuing bonds therefor, and providing for the payment of the same, shall, in voting, stamp a cross (X) in a square to the right of the word "Yes," as printed upon said ballot. Qualified electors at said election desiring to reject said proposition shall, in voting, stamp a cross (X) in the square to the right of the word "No," as printed upon said ballot.

Said election shall be held and conducted, votes received and canvassed, and returns made and the results determined, according to the law governing municipal elections in said city, in the same manner in which other elections are held in said city of Santa Cruz. The polls of such election shall be opened at sunrise in the morning of said day of election and shall close at five o'clock p. m. of the same day.

The voting precincts, places of election or polling places at which polls will be opened in said city of Santa Cruz for the pur-
152 pose of voting at said election, and the officers of election designated and appointed to conduct the said election therein, are hereby established and defined and appointed as follows, to wit:

SECTION 2.

The places for holding said election shall be as follows:

In the first ward, at the Farmers' Union building, No. 195 Pacific avenue.

In the second ward, at the St. Charles Hotel building, No. 13 Mission street.

In the third ward, at Young Men's Christian Association building, No. — Pacific avenue.

In the fourth ward, at Davis' building, northeast corner of Mission and Bay streets.

SECTION 3.

There are hereby appointed for the first ward:

F. B. Curtis and Fred Barson as inspectors.

F. P. Cooper and L. S. Harmon as judges.

George A. Chittenden and Henry L. Carter as clerks.

W. S. Fitch and George Birkenseer as ballot clerks of said election.

For the second ward:

Henry F. Kron and Peter R. Hines as inspectors.

Edward Gilleran and U. S. Nichols as judges.

Will E. Grant and Edmund Jones as clerks.

J. J. C. Leonard and Vincent Nolan as ballot clerks of said election.

For the third ward:

N. P. Ingals and C. E. Huyck as inspectors.

John Morrow and Wm. Rennie as judges.

153 R. S. Miller and F. B. Stevens as clerks.

T. J. Egan and Jos. M. Green as ballot clerks of said election.

For the fourth ward:

Henry Shaw and A. Fridley as inspectors.

A. W. Bryant and W. H. Mason as judges.

E. M. Silvey and J. B. Harris as clerks.

L. L. Fargo and F. H. Parker as ballot clerks of said election.

The officers of election hereinbefore named and designated must, prior to entering upon their respective duties, each take the oath of office prescribed by law for such officers of State, county and municipal elections.

In case any of the officers of election so designated and appointed shall fail to attend, those attending with the qualified electors assembled shall fill their places by appointing other competent persons from among the qualified electors present.

All returns of said special election shall be made out and signed by said officers of the special election in the usual form and deposited with the city clerk, as provided by law.

No person shall be entitled to vote at said election unless he be a qualified elector of the city of Santa Cruz.

If, upon the canvass of the returns of said election it be found that two-thirds of the votes voting thereat have voted in favor of refunding said indebtedness, issuing bonds therefor, and providing for the payment of the same, then and thereafter said indebtedness shall be refunded, bonds issued therefor, and provisions made

154 for the payment of the same, in the manner herein and as by law provided.

SECTION 4.

This ordinance shall take effect from and after its passage and approval.

I hereby certify that the foregoing ordinance was passed and adopted by the city council of the city of Santa Cruz, at the meeting thereof held this twenty-sixth day of February, A. D. 1894, by the following votes: Ayes, Councilmen F. W. Lucas, J. Ho. Bailey, F. J. Hoffman, E. G. Greene; noes, none; absent, none.

[SEAL.] O. J. LINCOLN,
City Clerk of said City of Santa Cruz.

Approved this twenty-sixth day of February, A. D. 1894.
WM. T. JETER, *Mayor.*

Attest with seal of said city:

[SEAL.] O. J. LINCOLN, *City Clerk.*

Ordinance No. 317.

An ordinance declaring the result of the special election held in the city of Santa Cruz on Thursday, the thirteenth day of March, for the purpose of submitting to the qualified electors of said city of Santa Cruz the question of refunding the bonded indebtedness of said city of Santa Cruz, issuing bonds therefor, and providing for the payment of the same.

155 The mayor and common council of the city of Santa Cruz do ordain as follows:

SECTION 1.

That a special election was held in the city of Santa Cruz, on Tuesday, the thirteenth day of March, 1894, in pursuance of and in conformity with an ordinance of the city of Santa Cruz, entitled "ordinance No. 315," providing for notice to be given of a special election in the city of Santa Cruz, to be held March 13, 1894, for the purpose of submitting to the qualified electors of said city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same," passed and approved on the twenty-sixth day of February, 1894, and in pursuance of and in conformity with a notice of special election, duly given, published and posted, as provided by law, and by said ordinance, and after all steps and proceedings required by law to precede such election had been had and taken, as in the manner and at the times provided by law, and in strict conformity with law, for the purpose of submitting to the qualified electors of the city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same.

SECTION 2.

That the returns of such election have been duly, legally and regularly made and filed with the city clerk by the proper boards and officers of said election, and such returns have been duly
156 opened and canvassed by the mayor and common council of said city of Santa Cruz, sitting as a canvassing board of said election, who have *been* regularly met for the purpose, and the result is hereby declared to be as follows, viz:

At the election held in the city of Santa Cruz on Tuesday, the thirteenth day of March, 1894, for the purpose of submitting to the qualified electors of the city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same, there were cast 595 votes, of which number of votes so cast, 538 votes were cast in favor of the proposition, "for refunding the bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000 and issuing bonds therefor, and providing for the payment of the same;" and 57 votes were cast against the proposition, "for refunding bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000

and issuing bonds therefor, and providing for the payment of the same," and the mayor and common council of said city of Santa Cruz do hereby find and declare that the proposition, "for refunding bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000, and issuing bonds therefor, and providing for the payment of the same," was carried by a vote *for* more than two-thirds of the qualified electors of said city of Santa Cruz voting at said election, and that more than two-thirds of the votes cast at said election were cast in favor of refunding the bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000 and issuing bonds therefor, and providing for the payment of the same.

157 SECTION 3.

This ordinance shall take effect from and after its passage and approval.

I hereby certify that the foregoing ordinance No. 317 was passed and adopted by the city council of the city of Santa Cruz at the regular adjourned meeting thereof, held this fifteenth day of March, A. D. 1894, by the following votes: Ayes, Councilmen F. W. Lucas, J. H. Bailey, F. J. Hoffman, E. G. Greene; noes, none; absent, none.

[SEAL.] O. J. LINCOLN, *City Clerk.*

Approved this fifteenth day of March, A. D. 1894.

WM. T. JETER, *Mayor.*

[SEAL.] O. J. LINCOLN, *City Clerk.*

Ordinance No. 318.

An ordinance declaring the result of the special election held in the city of Santa Cruz on Thursday, the thirteenth day of March, for the purpose of submitting to the qualified electors of said city of Santa Cruz the question of refunding the bonded indebtedness of said city of Santa Cruz, issuing bonds therefor, and providing for the payment of the same.

The mayor and common counsel of the city of Santa Cruz do ordain as follows:

158 SECTION I.

That a special election was held in the city of Santa Cruz on Tuesday, the thirteenth day of March, 1894, in pursuance of and in conformity with an ordinance of the city of Santa Cruz, entitled "ordinance No. 315, providing for notice to be given of a special election in the city of Santa Cruz, to be held March 13, 1894, for the purpose of submitting to the qualified electors of said city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same," passed and approved on the twenty-sixth day of February, 1894, and in pursuance of, and in conformity with, a notice of special

election duly given, published and posted as provided by law, and by said ordinance, and after all steps and proceedings required by law to precede such election had been had and taken, and in the manner and at the times provided by law, and in strict conformity with law, for the purpose of submitting to the qualified electors of the city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same.

SECTION II.

That the returns of such election have been duly, legally and regularly made and filed with the city clerk by the proper boards and officers of said election, and such returns have been duly opened and canvassed by the mayor and common council of said city of Santa Cruz, sitting as a canvassing board of said elec-
159 tion, who have *been* regularly met for the purpose and the result is hereby declared to be as follows, viz:

At the election held in the city of Santa Cruz, on Tuesday, the thirteenth day of March, 1894, for the purpose of submitting to the qualified electors of the city of Santa Cruz the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same, there were cast 595 votes, of which number of votes so cast, 538 votes were cast in favor of the proposition, "for refunding bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000, and issuing bonds therefor, and providing for the payment of the same," and 57 votes were cast against the proposition, "for refunding bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000 and issuing bonds therefor, and providing for the payment of the same," and the mayor and common council of said city of Santa Cruz do hereby find and declare that the proposition "for refunding bonded indebtedness of the city of Santa Cruz to the aggregate amount of $360,000, and issuing bonds therefor, and providing for the payment of the same," was carried by a vote of more than two-thirds of the qualified electors of said city of Santa Cruz, voting at said election, and that more than two-thirds of the vote- cast at said election were cast in favor of refunding the bonded indebtedness of the city of Santa Cruz, to the aggregate amount of $360,000, and issuing bonds therefor, and providing for the payment of the same.

160 SECTION III.

This ordinance shall take effect from and after its passage and approval.

I hereby certify that the foregoing ordinance, No. 318, was passed and adopted by the city council of the city of Santa Cruz, at the regular adjourned meeting thereof, held this nineteenth day of March, A. D., 1894, by the following votes: Ayes—Councilmen F. W. Lucas, J. H. Bailey, F. J. Hoffman, E. G. Greene. Noes—none. Absent—none.

[SEAL.] C. F. LINCOLN, *City Clerk.*

Approved this nineteenth day of March, A. D. 1894.

WM. T. JETER, *Mayor.*

O. J. LINCOLN, *City Clerk.* [SEAL.]

Ordinance No. 320.

An ordinance providing for refunding the bonded indebtedness of the city of Santa Cruz, issuing bonds therefor, providing for the payment of the same, and for the sale, and the manner of sale, of the bonds so issued, and directing the city clerk to give notice inviting sealed proposals for the sale of the bonds so issued, and, also, providing for the disposition of the funds derived from the sale of the bonds so issued.

Whereas, a special election was held in the city of Santa
161 Cruz, on Tuesday, the thirteenth day of March, 1894, pursuant to the provisions of an act of the legislature of the State of California, entitled "An act to amend an act, entitled 'An act to authorize the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same,' (approved March 15, 1883)," with ordinance No. 314 of said city of Santa Cruz, entitled "An ordinance calling a special election and submitting to the qualified electors of the city of Santa Cruz the question of refunding the bonded indebtedness of said city issuing bonds therefor, and providing for the payment of the same," passed and approved February 25, 1894; and, also, in accordance with ordinance No. 315 of said city of Santa Cruz, entitled: "An ordinance providing for notice to be given of a special election in the city of Santa Cruz, to be held March 13, 1894, for the purpose of submitting to the qualified electors of said city the question of refunding the bonded indebtedness of said city, issuing bonds therefor, and providing for the payment of the same," passed and approved February 26, 1894, and

Whereas, notice of said special election was duly given as provided by law, and said ordinance No. 315, and

Whereas, said notice of such special election recited the indebtedness to be refunded, together with the denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued as provided by law; and, also, fully set forth and described the indebtedness proposed to be refunded; and

said special election was duly held after all steps, acts, con-
162 ditions, proceedings and things required by law to precede such election had been duly had, taken and done as and in the manner, and at the times provided by law, and in strict conformity with law; and whereas more than two-thirds of the qualified electors of said city of Santa Cruz voting at said special election voted in favor of the refunding of the bonded indebtedness of said city to the aggregate amount of $360,000, and issuing bonds therefor, and providing for the payment of the same; and

Whereas, all acts, conditions, and things required by law to be done precedent to the issue of the bonds herein ordained to be issued have been properly done, happened and performed in legal and due form as required by law.

Now, therefore, the mayor and common council of the city of Santa Cruz do ordain as follows, to wit:

SECTION I.

There shall be issued by the city of Santa Cruz three hundred and sixty (360) bonds of the denomination of one thousand (1,000) dollars each, bearing interest at the rate of five per cent. per annum, payable annually. Said bonds shall be of the character known as "serials," and shall be payable principal and interest in gold coin of the United States, in the manner following:

One-fortieth part of the principal of the indebtedness to be incurred shall be payable annually, to wit: the sum of $9,000, together with the annual interest on all sums of said indebtedness then unpaid, until the whole amount of said indebtedness is paid.

The bonds to be issued shall be numbered consecutively from
163 one to three hundred and sixty, both inclusive, and shall be divided into forty serials, to be numbered consecutively from one to forty, both inclusive, and consisting of nine bonds each. The first series shall include those bonds which are numbered from one to nine, both inclusive, and each succeeding series shall include nine bonds, which are numbered consecutively after those included in the next preceding series. The bonds included in the first of said series shall be made payable on the fifteenth day of April, A. D. 1893, and all of the remaining series shall be made payable, one series in each year, in consecutive order on the fifteenth day of April in each succeeding calendar year thereafter until and including the year 1934.

Said bonds shall be made payable to bearer and shall bear date of the sixteenth day of April, 1894, and shall be signed by the mayor and city clerk, and shall have affixed thereto the seal of the city of Santa Cruz.

To each of said bonds there shall be attached interest coupons equal in number to the number of years which the bond has to run before its maturity.

Each of said coupons shall represent one year's interest upon the principal amount of the bond, at the rate of five per cent. per annum, viz: fifty dollars, and one of said coupons shall be payable on the fifteenth day of April, in each calendar year. Each coupon shall be made payable to bearer and must bear the lithographed signatures of the mayor and city clerk. Said bonds shall be substantially in the following form:

164 UNITED STATES OF AMERICA, *State of California.*

Bond of the City of Santa Cruz.

"No. —. Series —. $1,000.

Refunding Bond.

The City of Santa Cruz, a municipal corporation in the county of Santa Cruz, State of California, is indebted to and promises to pay to the bearer, for value received, the sum of one thousand dollars, gold coin of the United States, on the fifteenth day of April, A. D. ——, with interest thereon, in like gold coin, at the rate of five per cent. per annum, payable annually on the fifteenth day of April each calendar year, from the date hereof, at the office of the city treasurer of said city of Santa Cruz, on presentation and surrender of the proper interest-bearing coupon hereto attached.

And for the payment of the principal sum herein named and the interest accruing thereon, the said city of Santa Cruz is held and firmly bound and its faith and credit and all the real and personal property of said city are hereby pledged for the prompt payment of this bond and interest at maturity.

This bond is one of a series of bonds of like date, tenor, and effect, issued by the said city of Santa Cruz for the purpose of refunding the bonded indebtedness of said city and issuing bonds therefor, and providing for the payment of the same, under and in pursuance of, and in conformity with, the provisions of an act of the legislature of the State of California, "An act to amend an act entitled,
165 'An act authorizing the common council, board of trustees, or other governing body, of any incorporated city, or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same,' (approved March 15, 1883,)" approved March 1, 1893.

And in pursuance of and in conformity with the constitution of the State of California, and *in* the ordinance of the city of Santa Cruz, and in pursuance of, and in conformity with, a vote of more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election, duly and legally called and held and conducted in said city, as provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published in the manner as required by law and after the result of said election had been duly canvassed, found, and declared in the manner and as required by law.

And it is hereby certified and declared that all acts, conditions and things required by law to be done precedent to and in the issue of said bonds have — properly done, happened, and performed in legal and due form and as required by law.

This bond ceases to bear interest when due, unless presented for payment.

In testimony whereof the said City of Santa Cruz, by its mayor

and common council, has caused this bond to be signed by the
166 mayor of said city and attested by its said clerk, with the seal of said city attached, this sixteenth day of April, A. D. 1894.

——— ———,
Mayor of the City of Santa Cruz.

———— ————, *City Clerk.*

The coupons attached to said bonds shall be substantially in the following form:

Refunding bond number —. Coupon number —.

The City of Santa Cruz will pay to the bearer hereof, on the fifteenth day of April, A. D. —, at the office of the city treasurer of said city, fifty dollars, gold coin of the United States, for interest on bond number —, issued sixteenth day of April, A. D. 1894.

——— ———,
Mayor of the City of Santa Cruz.

———— ————, *City Clerk.*

The city clerk is hereby authorized and required to cause to be prepared and lithographed upon linen parchment, of the most suitable quality therefor, three hundred and sixty blank bonds, with coupons attached, of the form and denomination herein specified and provided for, sufficient in number, and have the same ready for execution on behalf of the city, on or before the sixteenth day of April, A. D. 1894.

SECTION III.

The city clerk is hereby directed to cause to be published
167 in the "Santa Cruz Surf" and "Santa Cruz Daily Sentinel," newspapers printed and published in the city of Santa Cruz, and, also, in the "San Francisco Chronicle," a newspaper printed and published in the city and county of San Francisco, State of California, daily, for a period of fifteen days next preceding and up to the sixteenth day of April, 1894, a notice of the intention of the mayor and common council of the city of Santa Cruz to sell said bonds herein ordained to be issued and stating that sealed bids for the purchase of said bonds, or any number thereof, will be received by the city clerk, on behalf of the mayor and common council of said city, at the office of the city clerk, in said city of Santa Cruz, from the first publication of said notice up to the hour of 2 o'clock p. m. on the sixteenth day of April, 1894, and that thereafter said bonds will be sold by the mayor and common council to the highest bidder, for not less than their face value, in United States gold coin, to be paid on delivery of said bonds, at the city treasurer's office in said city of Santa Cruz.

Said notice shall also state that the mayor and common council reserve the right to accept any portion of any bid, and also to reject any and all bids, or any portion of any bid and, also, that no bid will be considered that is for less than the face value of the bonds bid for; said notice shall also state the number and denomi-

nation of said bonds, the number of series thereof, and the length of time that the several series have to run before becoming due; that each bid must be accompanied by a certified check on the bank of Santa Cruz county, of the city of Santa Cruz, payable to the order of the mayor of the city of Santa Cruz, for five per cent. of the
168 amount bid by the bidder, as a guarantee on the part of the bidder that in case his bid is accepted he will, within twenty days after receiving notice of the readiness on the part of the mayor and common council to deliver said bonds, take and pay for the same as delivered according to the terms of the notice of sale; and that in case of the failure of any bidder whose bid shall be accepted for said bonds, or any part thereof, to take and pay for the bonds for which his bid may be accepted, within said time named, his check shall be collected by said mayor and the money collected thereon shall be paid to the city of Santa Cruz as liquidated damages accruing to said city of Santa Cruz against said defaulting bidder.

All checks of bidders, whose bids shall not be accepted, will be returned to them. That the deposit in United States post-office, at the city of Santa Cruz, of a notice of readiness to deliver said bonds, signed by the city clerk with the seal of the city affixed, and addressed and directed to the purchaser of said bonds, at his place of residence, as given in his bid, shall be deemed and taken as notice to the purchaser from the date of such deposit; and the purchaser's assent to the form of notice herein provided for shall be embodied in his bid.

SECTION IV.

There shall be levied and collected, annually, for the term of forty (40) years, by the proper authorities of the city of Santa Cruz, at the time of the levy and collection of the general taxes of the city of Santa Cruz, and in the same manner as for such levy and
169 collection provided, a special tax sufficient to pay the annual interest, as it falls due, upon the portion of said bonds remaining unpaid, and, also, sufficient to pay one-fortieth part of the principal of said bonds. The moneys so collected for the payment of the principal sum of said bonds shall constitute a sinking fund for the payment of the principal sum of said bonds, as the same falls due, and with which said principal sum shall be paid, as the same falls due, as follows, to wit:

Nine thousand dollars ($9,000) of such principal sum on the fifteenth day of April, 1895, and $9,000 of such principal sum on the fifteenth day of April of each year thereafter, until the whole of the principal sum of $360,000 is paid; and the said city of Santa Cruz shall and will pay said bonds and the interest thereon to the holders and owners thereof, as the same falls due.

SECTION V.

The proceeds of the sale of the bonds herein ordained to be issued shall be placed in the city treasury, to the credit of the funding fund, which is hereby created, and shall be applied only for the

purpose of refunding the bonded indebtedness of said city of Santa Cruz, for which they have been issued.

SECTION VI.

Whenever sufficient money is in the funding fund, in the hands of the city treasurer, to redeem one or more of the outstanding bonds to be refunded, the city treasurer shall publish once a week, for two weeks, in some newspaper of general circulation, published in the city of Santa Cruz, if there be any, a notice to the effect
170 that he is prepared to pay such bond or bonds (giving the number thereof), and if the same are not presented for redemption within thirty days after the first publication of such notice the interest on such bonds will cease. The city treasurer shall, at the same time, deposit in United States post-office, in the city of Santa Cruz, a copy of such notice, enclosed in a sealed envelope with the postage paid thereon, addressed to the owner and owners of such bonds at the post-office address of such owner and owners, as shown by the record thereof kept in the city treasurer's office.

If such bond or bonds are not presented within the time specified in such notice the interest thereon shall then cease and the amount due be set aside for the payment of the same whenever presented. All redemption of bonds shall be made according to the priority in the order of their issuance, beginning at the first number. Whenever such outstanding bonds are surrendered and paid, the city treasurer shall proceed to cancel the same by endorsing on the face thereof the amount for which they are received, the word "cancelled" and the date of cancellation. The city treasurer shall also keep a record of such bonds so redeemed and shall make a report of the same to the mayor and common council, at least once a month, accompanying the same therewith by the bonds which have been taken up and cancelled.

SECTION VII.

All moneys which shall remain in said funding fund after all the outstanding bonds to be refunded hereunder have been taken
171 up and cancelled, shall be paid into the general fund of the city of Santa Cruz and become a part thereof.

SECTION VIII.

This ordinance shall take effect from and after its passage and approval.

I hereby certify that the foregoing ordinance, No. 320, was passed and adopted by the city council of the city of Santa Cruz at the regular adjourned meeting thereof, held this twentieth day of March, A. D. 1894, by the following vote. Ayes—Councilmen F. W. Lucas, J. H. Bailey, F. J. Hoffman, E. G. Greene. Noes—None. Absent—None.

[SEAL.] O. J. LINCOLN, *City Clerk.*

Approved this twenty-sixth day of March, A. D. 1894.
WM. T. JETER, *Mayor.*

Attest with seal of said city.
[SEAL.] O. J. LINCOLN, *City Clerk.*

That the signature- of W. T. Jeter and W. J. Lincoln, wherever the same appear upon such ordinance record of the defendant, are genuine.

That a copy of ordinance No. 315, and the whole thereof, in the form hereinbefore set forth, was caused by the city clerk to be published, and was published in the "Santa Cruz Daily Sentinel," a newspaper published and printed in said city of Santa
172 Cruz, for not less than ten days before the thirteenth day of March, 1894, to wit: on the twenty-eighth day of February, 1894, the first, second, third, fourth, sixth, seventh, eighth, ninth, tenth, eleventh, and thirteenth days of March, 1894, being every day between said dates of February 28, 1894, and March 13, 1894, both inclusive, upon which said paper was published; and a copy of said ordinance No. 315, in similar form, was by the city clerk caused to be published, and was published, in the "Santa Cruz Surf," a newspaper published and printed in said city of Santa Cruz, not less than ten days before the thirteenth day of March, 1894, to wit: upon the twenty-eighth day of February, the first, second, third, fifth, sixth, seventh, eighth, ninth, tenth, twelfth and thirteenth days of March, 1894, said days being all the days between the twenty-eighth day of February and the thirteenth day of March, 1894, both inclusive, upon which said paper the "Santa Cruz Surf" was published; and that a copy of said ordinance No. 315, in similar form, was by said city clerk caused to be posted, and was posted, for more than ten days before the thirteenth day of March, 1894, at each of the places of election mentioned in said ordinance No. 315, to wit: at Farmers' Union building, No. 195 Pacific avenue; at the St. Charles Hotel building, No. 13 Mission street; at Young Men's Christian Association building, northeast corner of Mission and Bay streets, all in said city of Santa Cruz.

That no notice of said special election was ever publish-, posted, made, or given otherwise than as specifically stated in this stipulation.

173 That on March 13, 1894, the so-called special election was held, but nothing herein contained shall be deemed to be a waiver of defendant's objection and contention that such election was entirely illegal and void.

That less than one-half of the qualified electors of said defendant, as the same appeared on the great register of the county of Santa Cruz, at the general election last preceding, namely, 595 out of a total of 1,452 qualified electors, voted at such so-called special election.

That the polls at such so-called election were closed at 5 p. m., and that sundown of said March 13, 1894, occurred at six fifteen p. m.

And, whereas, pursuant to the stipulation of the parties, certain depositions of witnesses have been taken on behalf of the plaintiff—

It is now stipulated and agreed that the witnesses testifying in such depositions, testified respectively to the following effect, to wit:

That JOHN BRANCH, being duly sworn, in the city of Boston, State of Massachusetts, on the seventeenth day of September, 1896, testified as follows:

Direct examination:

I am treasurer of the People's Trust Company of St. Albans, Vt. I have been the owner of one of the municipal bonds, purporting to be executed by the defendant on April 16, 1894, that is bond No. 297 for $1,000, principal due 1927. About September 1, 1894, I had $1,000 that I wanted to invest in some strong municipal bond, and about that time a representative of Coffin & Stanton, a bond
174 house, as I supposed of good repute in New York, offered me a Santa Cruz bond, having a long time to run, bearing five per cent. at par, and accrued interest at one hundred and one, less one per cent. commission, and I thought the bond was a good purchase, because the bond was a refunding bond, and also from their financial statement. I ordered the bond, and on September 10, received it, with a draft attached for $1,029.36, which was at the rate of one hundred and one and interest. I paid the draft, and Coffin & Stanton refunded me $10. I have been the owner of that bond ever since. I assigned the first coupon, due on the fifteenth day of April, 1895, by instrument in writing, to Albert H. Waite, of Worcester, Massachusetts. When I purchased it, I made no inquiries in regard to the outstanding indebtedness of the city of Santa Cruz, to refund which this series of bonds was issued, nor did I make any inquiry in regard to the title of Coffin & Stanton, or any of the members of that firm to the bond, and had no knowledge in regard to their title from any source other than inquiries made by me.

I had no knowledge relative to the condition of the outstanding indebtedness of the city of Santa Cruz further than the published statement made by Coffin & Stanton of the indebtedness, together with the assessed valuation and population, etc., the usual statement furnished by bond houses. I have not that statement with me. I do not know where it is.

Cross-examination:

The People's Trust Company of St. Albans had no business relations with Coffin & Stanton at that time. The only time
175 that they did have any was in 1887 or '88, when we purchased of them some Iowa county bonds. It has never acted in any capacity as agent or otherwise for Coffin & Stanton. Individually, I had no business relations with Coffin & Stanton prior to the purchase of this Santa Cruz bond. Mr. Terrill called on me on behalf of Coffin & Stanton. I don't think that he gave me any information either in writing or orally about the character

of the bonds. I think he merely presented his circular of offerings. Mr. Terrill did present a financial statement or circular to me. I saw that before offering. It was the usual financial statement offered by bond houses, giving, as I remember, the assessed value, the bonded debt and the population. I was afterwards furnished by Coffin & Stanton with copies of opinion of attorneys. The Santa Cruz attorney's name was Goldsby. My recollection is that they were both California attorneys. I think that the opinion which you show me purporting to be a certified copy of the opinion on the validity of these bonds, signed by Z. N. Goldsby, is a copy of the opinion I saw. The opinions were sent to me with the bond. I examined them practically at the same time I paid for the bond. I felt that the house of Coffin & Stanton was a reputable house; that I knew about Santa Cruz, and that an obligation against them was good, so I bought the bond in good faith, believing that it was good, and would be paid.

The only representations upon which I acted were those made in the financial statement, and in the opinions of these attorneys, and with an idea I got somewhere that Santa Cruz was a city of
176 about eight thousand inhabitants, similar to St. Albans, with a bonded debt of something under $400,000. That is about the debt of St. Albans. The population is about the same, and I regarded our bonds as very good. If I had known that the bonded debt was some $700,000, I would not have thought so well of it.

That JOHN M. GRAHAM, being duly sworn, at the city of Boston, State of Massachusetts, on the fifteenth day of September, 1896, testified as follows:

I am president of the International Trust Company of Boston. That company came into possession of sixteen municipal bonds purporting to be executed by the officers of the city of Santa Cruz on the sixteenth day of April, 1894, being numbers 10, 11, 12, 14, 91, 92, 93, 118, 119, 120, 121, 122, 123, 124, 125, and 126. These bonds were lodged with the International Trust Company as collateral security for a note dated New York, June 20, 1894, payable four months after date, no grace, for $50,000, signed by Coffin and Stanton; $12,000 of the bonds were deposited as collateral at the time of the execution of said note; $4,000 was subsequently lodged with me as collateral in lieu of $4,000 of Illinois Central Railroad 4's, released in exchange for the said $4,000 Santa Cruz bonds—that is, the four bonds of the Illinois Central were pledged at the time of the execution of the note, and were afterward surrendered and the other four Santa Cruz bonds accepted in their place. At the time of the execution of this note, the International Trust Company loaned the money expressed therein. It has never been paid. The International Trust Company is still in possession of these bonds.

177 At the time the International Trust Company made the loan to Coffin & Stanton, it had no notice or knowledge of the title of Coffin & Stanton of those bonds, beyond the fact that they were offered by Coffin & Stanton as collateral with their note,

and were, in fact, delivered with the note. It had no notice of any fact which would tend to show in any way a want of title on the part of Coffin & Stanton, nor any knowledge or notice of the financial condition of the city of Santa Cruz, beyond representations made at the time the bonds were delivered to us with the note that the bonds were regular and valid, and in accordance with the certificate on the face of the bonds signed by the officers of the city. It had no notice of the financial condition of the defendant further than that the bonds were regular and valid, and in accordance with the certificate on the face of the bonds signed by the officers of the city. It had no notice of the financial condition of the defendant further than that the bonds were represented to be good and valid and worth a premium. No statement was made to the International Trust Co. in regard to the exact condition of the indebtedness of the city.

The note has not been paid, with the exception of certain credits allowed by the receiver of Coffin & Stanton in accordance with an order issued by the United States circuit court of New York, dated May 17, 1895. Under that order, and with the consent of the receiver, the absolute title to these bonds were conveyed to the International Trust Company in consideration of our crediting the bonds in partial payment of the note—$16,000 of the Santa Cruz
178 bonds at sixty, or $9,600. On the other securities pledged with the Santa Cruz bonds, the International Trust Co. gave credit for $17,000 of the town of Greenburg at eighty-five, $14,450, and $20,000 State of Iowa bonds at one hundred and ten, or $22,000, making a total credit of $46,050 on the note of $50,000, which leaves due on the note, after charging interest up to date of giving credit, about $5,000, which balance is still outstanding. The receiver of Coffin & Stanton, with whom we deal, was Thomas C. Wicks, 55 Liberty St., New York.

Cross examination:

The International Trust Co. had no business relations with Coffin & Stanton at that time, but had loaned them from time to time on collateral theretofore. Its relations with Coffin & Stanton were as borrower and lender merely. The $50,000 note which I have mentioned represents money actually advanced at the time. We did not receive a written or printed statement from Coffin & Stanton purporting to show the financial condition of the city of Santa Cruz.

We did not receive a certificate of examination and opinion from an attorney in Santa Cruz. There was a statement made that the legality of the issue had been examined and approved by attorneys for Coffin & Stanton. I did not see the certificate of the opinion myself. These bonds, or any matters connected with them, were not at any time examined by any officer of the International Trust Company.

The substitution of $4,000 Illinois Central bonds for $4,000
179 Santa Cruz bonds was made September 11, 1894. No independent examination was made at that time to ascertain any-

thing concerning the validity of the value of these bonds. We never acted as agent for Coffin & Stanton or in any such capacity, and have no relations with them except that we have loaned them money from time to time on approved collateral.

Redirect:

The general financial standing of Coffin & Stanton at the time of this transaction was high.

Recross:

The words "at 94½ per cent." after the entry "$12,000, city of Santa Cruz, California, 5 per cent. refunding," on the $50,000 note, represents the price at which the Santa Cruz bonds were taken to equal the loan of $50,000 made at the time. Including the credit of $9,600 given on account of the Santa Cruz bonds, the total amount paid up to date on the note is $47,050. We hold no collateral security for the note that has not yet been applied to its payment.

That CHARLES J. CHAPMAN, being called on behalf of the plaintiff and duly sworn, testified as follows:

I am vice-president of the Chapman National Bank of Portland, Maine. The Chapman national bank came into possession of seven $1,000 bonds purporting to be executed by the officers of the city of Santa Cruz, on April 16, 1894, numbered 245, 246, 247, 248, 249, 250, and 251, on or about May 8, 1894. On November 18, 1893, it loaned Coffin & Stanton $5,000 and took as collateral $6,000
180 in bonds of the city of Ironwood, Michigan. During the succeeding winter we asked for additional collateral, the note, which was a four or six months' note, not being due. We had the right under the note to demand additional security, and they sent us a $1,000 bond of the American Debenture Company of Chicago. When the note became due, they asked to renew it. We were unwilling. I saw Mr. Coffin and he stated that he had or would have some bonds of Santa Cruz, which he said were a gilt-edge security, as good as Government bonds, and if we would lend him $5,000 more he would give us as collateral $7,000 Santa Cruz bonds.

I laid the proposition before the directors and they accepted it.

On May 9, 1894, Coffin & Stanton drew on us for $5,000. We paid the draft and they sent us the securities and we took one note dated May 9 for $5,000 at three months, and another dated May 9 for $5,000 at six months. We then had as collateral for both notes the $60,000 city of Ironwood bonds, the $1,000 American Debenture Co. bond, and the $7,000 city of Santa Cruz. The pledge of these seven Santa Cruz bonds represented a fresh advance of $5,000 cash, and a renewal of a previous note of $5,000. The first note of three months became due August 12, and was paid by a renewal for four months more, and we now hold the six months' note of May 9 and the four months' renewal of the other. Coffin & Stanton have never paid directly the amount due on either of those notes. The

Ironwood bond was contested and held invalid by the courts.
181 The American Debenture Co. bond we consider of no account and it has been charged off. The Santa Cruz bonds the bank has reduced to its possession and credited them on account of the bank at par $7,000.

At the time the bank took this pledge of the bonds, it had no knowledge or notice, or supposition whatever, but that Coffin & Stanton were the absolute owners of the bonds. We had no knowledge of any facts which would lead us to suppose that they were other than owners. I was the person who had the conversation with Mr. Coffin, who stated to me that this issue of bonds represented all that the city owed; that they were refunding bonds and took up all the obligations of the city, and further that there were certain water rates and other matters that were pledged for the payment of the interest, and the bonds were absolutely good. I never thought to inquire whether he had paid for the bonds. When we take any bonds we always write at random to merchants and bankers in the place, to investigate. In this instance we wrote to several parties there, and received favorable answers. We did not preserve the records of the matter.

Coffin & Stanton showed me an opinion of an attorney in regard to the validity of the bonds.

Cross-examination:

Five thousand dollars was the only new money advanced when we got the Santa Cruz bonds, but we would have forced the payment of the first note if we had not received the additional margin.
We retained all the collateral securities that we previously
182 held, for the first loan. We made no attempt to realize on the bond of the American Debenture Co., because it was valueless.

After the failure of Coffin & Stanton we credited the Stanta Cruz bonds at par on the notes, $3,500 on each note. This was some time in June, 1896.

We bought the bonds by virtue of the power in the note to purchase the bonds at public or private sale. The board of directors voted to purchase the bonds at par. We did not deal with the receiver. The Chapman national bank had no other business relations with Coffin & Stanton except which I have related. It never acted as agent or correspondent for them.

That JOHN E. BABCOCK, a witness on behalf of plaintiff, being duly sworn, testifies as follows:

I am treasurer of the Wakefield Trust Co., of Wakefield, Rhode Island. The Wakefield Trust Co. has in its possession a $1,000 bond, purporting to be executed by the officers of the city of Santa Cruz, on the sixteenth day of April, 1894. Late in July, 1894, Coffin & Stanton asked for a loan of $10,000 and we loaned them $5,000, with $5,000 New York Suburban Water Co. bonds and $2,000 Illinois Central four per cent. gold bonds, as collateral. This loan was on August 2, 1894, and Coffin & Stanton gave us a prom-

issory note for $5,000, due four months after date, December 2, 1894.

After the last part of August they wrote us asking to send them the Illinois Central Railroad bonds, as they had disposed of them and wanted to substitute, and they sent us $1,000 more of the New
York City Suburban Water Co. bonds, and $1,000 bond of the
183 city of Santa Cruz. We received these two bonds, the New York bond and the Santa Cruz bond, in lieu of the Illinois Central bonds which we surrendered. This was about August 29, 1894; the Santa Cruz bond is number —21.

The Wakefield Trust Co. has agreed with the receiver of Coffin & Stanton to take the bond on account of sixty per cent. of its face value. When we made this loan we had no knowledge or notice of any facts regarding the title of Coffin & Stanton to this bond, except that they said they bought them. They wrote us a letter as follows:

"Coffin & Stanton, bankers, New York, London.

"72 BROADWAY, NEW YORK, *Aug.* 28, 1894.

"Wakefield Trust Co., Wakefield, Mass.

"GENTLEMEN: We have disposed of the $2,000 Illinois Central four per cent. bonds which are held by you as part collateral to our loan, for immediate delivery, and therefore send you tonight, under separate registered cover, $1,000 city of Santa Cruz, Cal., five per cent. bond, and $1,000 New York City Suburban Water Company six per cent. bond. Please send the Illinois Central bonds by return registered mail, we having insured them during transit. We enclose postage for that purpose.

"You are doubtless familiar with the merits of the New York
City Suburban bonds, as you at present hold a number of
184 them as collateral to our loan. We might add that we have made quite a number of sales of these bonds within the past two weeks at prices ranging from one hundred to one hundred two and one-half, and interest.

"We would call your attention to the fact that the city of Santa Cruz is a prosperous city located in the most highly improved portion of the State of California, in the vicinity of San Francisco, being peopled principally by inhabitants from New York and the New England States, who have gone thither in search of a more congenial climate. The city's affairs are well and intelligently conducted, we having been its fiscal agents for many years, and have never known it to default or delay in the payment of interest upon any of its bonds. This issue was purchased by us after a thorough investigation by our Mr. Stanton upon the ground, and after he had become satisfied as to the stability of the city and its future prospects. We consequently have no hesitation in recommending the bonds as an excellent investment.

"Trusting that this substitution will meet with your approval, we remain,

"Yours truly, COFFIN & STANTON.

"T."

Counsel for defendant consent to insertion of a copy of letter.

185 They also sent us a circular which was as follows:

"Coffin & Stanton, bankers, New York, London.

"We offer subject to sale, or advance in price,

"$300,000

"City of Santa Cruz, California, five per cent. refunding gold, dated April 16, 1894, due as follows:

"$9,000 April 15, 1895, and $9,000 annually thereafter.

"Average time to run, 20½ years.

"No option of redemption before maturity.

"Denomination, $1,000.

"Coupons — annually April 15th.

"Payable at city treasurer's office, Santa Cruz.

"Real valuation		$9,768,600
"Assessed valuation		3,907,400
"Total debt (this issue)	$360,000	
"Issued to refund bonds for water supply	320,000	
"Net debt		40,000

"Including the suburbs, a total population of 11,000 is tributary to the water system. The corporate limits of the city have not been enlarged for many years.

"The water plant is a gravity system, costing about $370,000.

"A legal investment for savings banks in the State of Rhode Island, Pennsylvania, Maryland and New Hampshire. Price, 101 and interest. Nets nearly 5 per cent.

186 "Under the law governing savings banks' investments in the State of Massachusetts, the debt issued for water supply is deducted from the gross debt on the theory that such property is self-sustaining, and no burden upon the city. In estimating the debt indebtedness this rule has been followed."

That letter and circular are all the evidence of the ownership of the bonds and of the financial condition of the defendant that the Wakefield Trust Company had at the time it accepted bond No. 21 in place of Illinois Central bonds.

Cross-examination:

I do not recall being shown a certificate from an attorney named Goldsby. As to the other securities that we held, we have accepted new bonds of the New York City Suburban Water Co. in place of the old ones. That company has been reorganized. We did not take a new note. The new bonds bore interest at the rate of two and one-half per cent. We took them at sixty-five. We acted wholly on the advice received from the receiver of Coffin & Stanton, and in connection with the advisory board of the creditors of Coffin & Stanton.

The Santa Cruz and New York City Suburban Water Co. bonds are the only collateral security we hold for that loan. Neither the Wakefield Trust Company nor myself had any business relations with Coffin & Stanton prior to this loan. Coffin & Stanton represented nothing further than the letter I have produced and the circular.

The Illinois Central bonds surrendered were two bonds of the par value of $1,000 each and the par value of the bonds re-
187 ceived in their place was $2,000. The Illinois Central at that time were quoted at ninety-eight to one hundred.

Redirect:

The advisory board of Coffin & Stanton was a committee appointed to represent the creditors generally in negotiation of affairs with the receiver.

That ALBERT STONE, a witness on behalf of plaintiff, being duly sworn, testified as follows:

I am vice-president of the National Bank of the Republic of Boston, Mass. The National Bank of the Republic took some bonds purporting to be signed by the city of Santa Cruz on April 16, 1894, as collateral for a loan to Coffin & Stanton, of $50,000. Their note is dated June 7th. The bank took as collateral $20,000 Kings county, New York, school district No. 6 bonds, $10,000 five per cent. city of Santa Cruz, and $25,000 Illinois Central Railroad Co. four per cent. bonds.

I acted on behalf of the National Bank of the Republic in that transaction, and made the loan through Moseley & Co., brokers, of this city. I did not personally know Coffin & Stanton, or either of them. They stood in the community with the highest credit, both for capital and integrity, and in every way rated at the highest rating in all the agencies, a million and over, and the highest credit.

At the time of the execution of that note, the National Bank of the Republic advanced to Coffin & Stanton the sum of $50,000 less the interest. It was a fresh advance at that time, not a renewal, nor to represent any antecedent debt. At that time neither
188 the officers of the National Bank of the Republic, so far as I know, nor myself, had any notice or knowledge regarding Coffin & Stanton's title to these Santa Cruz bonds. We did not know Coffin & Stanton in the transaction at all, but acted entirely with Moseley. We had no notice or knowledge of the financial condition of the city of Santa Cruz; it was simply represented to me by the broker as a first-class municipal bond. I do not know whether they submitted to me any written or printed statements as to the financial condition of city. They did not submit to us any opinion in regard to the validity of the bonds. When the note was delivered to us the bonds were delivered at the same time. The bonds pledged to the National Bank of the Republic to secure that loan were numbered 109 to 117 inclusive, and 72. The National Bank of the Republic has sold those bonds under the pledge to make a title.

Cross-examination:

So far as I know, our bank had no previous dealing with Coffin & Stanton. I personally had none. We put no value on these bonds in taking them as collateral. We took the face value of $55,000 as against the loan of $50,000. The loan was at four per cent. We actually advanced to Coffin & Stanton at that time $49,333.33, which is $50,000 less four months' interest.

That SUMNER WALLACE, a witness on behalf of plaintiff, being duly sworn, testifies as follows:

I am a member of E. G. & E. Wallace, tanning and shoe manufacturers, of Rochester, N. H. I represented that firm in the
189 purchase of certain bonds purporting to be executed by the officers of the defendant on April 16, 1894.

I then represented in the firm the interest of my father, E. G. Wallace, who was dead. In August, 1894, the firm owned a block of the stock of the Page Belting Company, at Concord, N. H. We were at loggerheads with the management of that company, and wanted to sell our stock. We decided to sell it through a broker in Boston, and to offer it through F. H. Prince & Co., brokers, of Boston. I called on F. H. Prince and asked him if he could dispose of the stock. He said he thought he could. In about a week I called again; he said he could sell the stock at eighty-five per cent. of the par value if we would take bonds at par and interest. He made us a proposition in writing as follows:

"F. H. Prince & Co., bankers and brokers, 2 and 8 State St.

"BOSTON, *Sept.* 22, 1894.

"Messrs. Coffin & Stanton, New York, N. Y.

"GENTLEMEN: We have arranged a trade for you with Messrs. E. & E. G. Wallace, as follows:

"We have sold $150,000 city of Santa Cruz, Cal., bonds at par, you to deliver the bonds at the earliest date of maturity which you hold, on Tuesday next, and $150,000 city of Irinwood, Mich., six per cent. bonds at one hundred and five, and interest, you agreeing that the legality of the city of Ironwood bonds shall be satisfactory
to Judge Dillon and a legal opinion obtained from him to
190 that effect, and if not from him, from such lawyer as may be agreeable to us. You are to take in part payment of the above bonds 520 shares of common and 350 shares of preferred stock of the Page Belting Company, at eighty-five per cent. of its par value, as follows: Half on the delivery of $150,000 city of Santa Cruz bonds, and the other half on the delivery of the $150,000 city of Ironwood bonds—you to deposit with us $10,000 city of Waco, Tex., first-mortgage water Co. six per cent. bonds and the 435 shares of Page Belting Co. stock received by you on delivery of the $150,000 city of Santa Cruz bonds, as surety that you will perform in full the above agreement in delivering the $150,000 of city of Ironwood bonds on the condition above named, and receive the remaining one-half of the Page Belting Co. stock, that is 435 shares as part payment

thereof. The balance of purchase-money for each lot of bonds is to be paid in cash on the delivery of bonds.

"Please confirm the trade by signing the inclosed letter and return the same to us forthwith.

"Very truly yours, F. H. PRINCE & CO."

Counsel for defendant consents to copy of letter being inserted. That letter addressed to Coffin & Stanton contains the substance of the proposition submitted to E. G. & E. Wallace and was accepted by that firm. Before accepting the proposition, we looked into the matter very carefully and used all the care we could to find out about the value of the bond- and the validity of their issue. We received $150,000 of the city of Santa Cruz five per cent. bonds
191 at par and interest and delivered 175 shares of the preferred stock and 260 of the common stock of the Page Belting Co. on account of the Santa Cruz bonds, and the balance covering Prince's commission of $2,500 for selling the stock, or $118,000, was paid in cash.

The bonds we received were refunding bonds of the defendant, which form the subject-matter of this action. The stock of the Page Belting Co. was delivered to Prince & Co. for the account of Coffin & Stanton and the money was paid for their account. The stock of the Page Belting Co. we have never received back. The proposition for a further sale of other shares of the Page Belting Co. and the purchase by us of the city of Ironwood, Mich., bonds was never carried out.

Eight of the bonds, numbered 1 to 9, inclusive, belonged to us; those bonds were also assigned to Mr. Waite, and so far as I know, are still in his possession. No other person representing the firm of E. G. & E. Wallace made any investigation in regard to these bonds. I made no investigation regarding the financial condition of the city of Santa Cruz prior to purchasing these bonds. I think F. H. Prince & Co. made no statement to me in regard to the financial condition of the city, or in regard to the validity of the bonds. They submitted the opinion of Mr. Goldsby, of Santa Cruz, Cal., and Mr. Gleason, of New York. This was not satisfactory to us, and we asked for the opinion of some attorney in Boston, and decided to refer it to Mr. M. F. Dickinson, Jr., attorney for the American Loan & Trust Co., and his opinion was obtained, which I have here.
Those opinions being favorable, I purchased the bonds. I
192 have the opinions of the attorneys upon which we relied in making the purchase. The opinion of Mr. Goldsby was as follows:

Z. N. Goldsby, attorney-at-law.

SANTA CRUZ, CAL., *April* 25, 1894.

I hereby certify that I have carefully examined all the steps taken and proceedings had relative to the issuance of $300,000 in five per cent. refunding bonds by the city of Santa Cruz, in the State of California, and the bonds issued pursuant thereto, dated April 16, 1894, and find said proceeding regular and said bonds

legally issued and a valid and binding obligation of said city of Santa Cruz.

Z. N. GOLDSBY,
Attorney-at-law.

The opinion of Mr. Gleason was as follows:

44 WALL STREET, NEW YORK, *Aug.* 16, 1894.

Messrs. Coffin & Stanton, 72 Broadway, N. Y. city.

GENTLEMEN: I return you herewith certified copies of the proceedings of the officials of the city of Santa Cruz, Cal., with reference to the issuance of the refunding bonds of said city, bearing date April 16, 1894.

I have made a careful examination of these papers and of the constitution and statutes of the State of California with reference to the issuance of refunding bonds by cities of said State.

All the provisions of the constitution and the statutes of
193 the State seem to have been most carefully and fully complied with, and from my examination I am of the opinion that these bonds are issued in pursuance of the laws relating thereto and are legal and valid obligations of the said city of Santa Cruz.

Yours truly, LAFAYETTE B. GLEASON.

The opinion of Mr. Dickinson was as follows:

BOSTON, *August* 29, 1894.

F. H. Prince & Co., 2 and 8 State St., Boston, Mass.

GENTLEMEN: I have examined the papers that you have submitted in regard to the $360,000 five per cent. refunding bonds of the city of Santa Cruz, Cal., dated April 16, 1894. In my opinion the bonds are legally issued in conformity to the laws of the State of California, and the ordinances of the city of Santa Cruz, and constitute a legal and valid obligation of said city.

Very respectfully, yours, M. F. DICKINSON, JR.

Counsel for defendant consents that copies of the three (3) foregoing opinions be inserted.

I made an inquiry as to the value of these bonds as a financial proposition from E. H. Rollins & Son, bankers & bond dealers, of Boston. They said the bonds were worth par easily, and a little more. I made no further investigation in regard to value nor in regard to validity other than the three opinions I have presented.

194 Cross-examination:

My uncle, Edwin Wallace, who is dead, came down at the time the deal was closed and assisted. He made no investigation as to the bonds. He left it all for me. We made the first proposition to Mr. Prince, or had the first talk with him, some time in August. We closed up September 22d, and between those dates we got the three opinions and had the talk with Mr. Rollins about the value of the bonds. I never saw Mr. Dickinson. Mr. Prince brought his

opinion to us. All these opinions were procured by Prince & Co. or by Coffin & Stanton. The Goldsby and Gleason opinions were submitted to us without consultation with us, but the Dickinson opinion was obtained after by agreement, after I had said to Prince & Co. that I wanted an opinion from Dickinson.

The Goldsby and Gleason opinions were submitted some time between the middle of August and September 22. Neither the firms of E. G. & E. Wallace nor myself had any prior business relations with Coffin & Stanton. I had had some little dealing with Mr. Prince with reference to the New York and New England Railroad reorganization scheme. That was the only dealing I have had with him and had nothing to do with the purchase or sale of bonds. I had had no other business or social or commercial relations with Prince & Co. None of the members of my firm had. They did not know Mr. Prince even by sight until after this deal was commenced. I will not say whether or not there was a prior communication from Prince & Co. to us with reference to this transaction.

195 I first heard in October, 1894, that Coffin & Stanton were in failing circumstances. We took the Santa Cruz bonds at par and interest.

That ALBERT H. WAITE, a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

I am the plaintiff in this action, and president of the First National Bank of Worcester, Mass. The First National Bank of Worcester acquired possession of twenty-two bonds purporting to be executed by the officers of the defendant on April 16, 1894, being bonds numbered 9, 13, 23, 100, 300, 301, 302, 303, 308, 309, 310, 311, 312, 325, 326, 327, 238, 343, 348, 349, 350, and 351. It acquired these bonds on the twentieth day of July, 1894, on account of a loan of $25,000 made at that time to Coffin & Stanton and represented by a promissory note of Coffin & Stanton. $12,000 Illinois Central 4's, $18,000 city of Santa Cruz 5's were placed as collateral security for the payment of that note. About August 28, they withdrew $2,000 Illinois Central 4's, substituting $2,000 Santa Cruz 5's. Again September 11, 1894, $2,000 Illinois Central were withdrawn and $2,000 Santa Cruz substituted. October 21, 1894, the remaining Illinois Central $8,000 were withdrawn and sold at their request, and they made a payment on the note of $6,400, which we credited.

I represented the bank in this transaction and dealt with a representative of Coffin & Stanton named Terrell. Coffin & Stanton have never paid the balance due on that note. The First National Bank of Worcester had these bonds advertised and sold at auction in New York city. I purchased the bonds and paid for them at 60 per cent. of their face.

196 At the time of this loan to Coffin & Stanton the First national bank had no knowledge or notice of what the title of Coffin & Stanton was to these bonds, nor of any facts which might lead it to know or understand that they were not the owners of those bonds. The bank made no investigation of the financial condition of the defendant, prior to the making of this loan. Mr. Ter-

rell made substantially the same representations as were embodied in a circular which they sent out, showing the population and resources of the city. He delivered to me the circular, which was as follows (the circular in question is the same as the circular hereinbefore printed at page 72, line 21 hereof).

That circular gave all the information that the First National Bank of Worcester had in regard to the financial condition of the city of Santa Cruz. It had no statement or opinion in regard to the validity of the issue. Mr. Terrell made satisfactory representations in regard to that.

The balance still due the First National Bank of Worcester after the payment made by Coffin & Stanton, and after the credit of 60 per cent. derived from the sale of the bonds, is $5,400 and interest on the balance. That is $5,400 of the principal remains unpaid, but no interest has been paid since the maturity of the note. The note is dated July 19, 1894, payable four months after date.

The National Bank of the Republic has turned its pledge into a title by selling its bonds at auction. I bought them, paying 40 per cent.

197 Cross-examination:

The sale was made in Boston by R. L. Day & Co., and was a pledgee's sale simply. I do not claim to have any better title to those bonds than the title held by the National Bank of the Republic. As to all the bonds and coupons sued on by me, I am merely a trustee for collection.

All the collateral security for the $25,000 note has been either released or sold to satisfy the note. The 22 Santa Cruz refunding bonds were sold at a pledgee's sale for 60 per cent. of their par value. Neither the First National Bank of Worcester nor myself had any business relations with Coffin & Stanton prior to the execution of the note, of which I have spoken, nor was the bank nor myself ever an agent or correspondent of Coffin & Stanton. This loan was the only transaction that either the bank or myself ever had with them.

I do not remember that Mr. Terrell produced any written certificates or opinions regarding the validity of the bonds. Coffin & Stanton wrote us the following letter:

72 Broadway, New York, *July* 14, 1894.

First national bank, Worcester, Mass.

Gentlemen: We are advised by our representative, Mr. Park Terrell, that you would probably be in a position to entertain an application for a loan of $25,000, to run four months at the rate of 5 per cent. per annum.

We have two loans maturing during the coming week, which will enable us to pledge with you as collateral security for the
198 loan above described $12,000 Illinois Central gold 4 per cent. bonds, at 98½, and $16,000 city of Santa Cruz, Cal., gold refunding 5's, at 101; or, if you prefer, we can give you $18,000 New

York City Suburban Water Co. 6 per cent. bonds in place of city of Santa Cruz, Cal., 5's.

You are doubtless familiar with the Illinois Central 4's. Those offered you are due in 1953, being quoted upon the New York stock exchange, last sales having been made at about the price above quoted.

We inclose circular describing the Santa Cruz bonds. This is a prosperous city, located in the most highly improved portion of the State of California, in the vicinity of San Francisco, and is peopled largely by inhabitants from New York and the New England States, who have gone thither in search of a more congenial climate. The city's affairs are well and intelligently managed, we having been its fiscal agents for many years, and never known it to default in the interest upon any of its bonds, with never a suggestion of delay at any time. These bonds were purchased by us after a thorough investigation made by our Mr. Stanton upon the ground, whose experience in the purchase of municipal securities is quite large. We consequently have no hesitation in recommending them as excellent investment. The plant of the New York City Suburban Water Co. is located at Mount Vernon, N. Y., supplying that city and adjacent municipalities, all immediately contiguous to the corporation line of New York city, with water. This territory will, doubtless, be annexed to New York city within the near future, which will greatly enhance the value of the water company's property. Besides,
199 we are advised that it will involve the acquirement of this plant by the city, thus constituting these bonds a New York obligation. The bonds are quoted in the present market at 102 and interest, recent sales having been made at that figure.

Trusting that either of the foregoing propositions may commend themselves to your judgment, we remain,

Yours very truly, COFFIN & STANTON.

"T."

(Enclosure.)

Counsel for plaintiff consents to a copy of letter being inserted.

That FRANK W. MISH, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

I am attorney for and director of the First National Bank of Hagerstown, Maryland. On July 18, 1894, the bank came in possession of bonds purporting to be executed by the officers of the defendant, on April 16, 1894. We had been doing business with Coffin & Stanton; in July, 1894, we wrote them asking them to propose a loan to the bank, and on July 13, 1894, they wrote us the following letter:

"72 BROADWAY, NEW YORK, *July* 13, 1894.

First national bank, Hagerstown, Md.

GENTLEMEN: We are in receipt of your favor of the tenth inst., suggesting that we might make a proposition to you for a loan for consideration at your board meeting to be held on the seven-
200 teenth inst. We beg to propose a loan of $5,000, for three months, 5 per cent., giving you as security $6,000 city of

Santa Cruz, Cal., 5 per cent., refunding gold bonds. We enclose you herewith a circular describing this issue, which gives the data. We might add that we have been the fiscal agents of this city for some years, and that in making remittances for their interest and principal they always have the funds in New York some days before they are due.

The city of Santa Cruz is one of the most beautiful spots in the State of California. The writer has visited the city several times, and would state that it has not only a fairly good mercantile business, and substantial agricultural interests, but probably entertains more guests every year than any other watering place in the State of California. The permanent residents of Santa Cruz are mostly eastern people, and the houses are substantially constructed. We have no doubt as to all interest and principal being promptly paid at maturity. If you desire we can furnish you with attorney's opinion establishing the legality of the issue, and will also be pleased to furnish you with any further particulars which you may desire. If your board considers our proposition favorably, we would be glad to have you telegraph us to that effect of the date the board indicated.

Yours truly, COFFIN & STANTON."

I have not the circular inclosed with the letter, but remember it set forth the advantages of Santa Cruz, and made a very satisfactory showing as to the financial condition of the defendant.

201 We made a loan to Coffin & Stanton of $5,000, with six $1,000 Santa Cruz bonds as collateral on July 19, 1894. The loan was represented by a promissory note in the words and figures following:

No. —. Due Oct. 16–19, '94.

$5,000. NEW YORK, *July* 18, 1894.

Ninety days after date, and upon return of security given, we promise to pay to First national bank, Hagerstown, Md., or order five thousand dollars for value received, having deposited herewith as collateral security $6,000 Santa —, Cal., 5 per cent. refunding bonds, with authority to sell the same, or other security subsequently substituted, at the board of brokers, or at public or private sale, at their option, on the non-performance of this promise; applying the net proceeds to the payment of this note, including interest and accounting to us for the surplus, if any. In case of deficiency we promise to pay to the holder of this note the amount of such deficiency, forthwith after such sale, with legal interest.

COFFIN & STANTON.

(Endorsed:) Pay E. Scofield, cashier, or order, for collection for account of First national bank, Hagerstown, Md. John D. Newcomer, cashier.

At the time of the delivery of this note the First national bank actually loaned that amount of money to Coffin & Stanton, less

discount at the rate of 6 per cent. per annum, for ninety days. The First National Bank of Hagerstown still holds those bonds in the same manner that it held them then, with the exception of
202 the coupon first maturing on each of the bonds which has been assigned to Mr. Waite, the plaintiff herein, for collection. The First national bank at the time of making this loan had no knowledge or notice of any facts relative to the title of Coffin & Stanton to those bonds, other than the statement contained in that letter and the possession of the bonds. Nor did it have any knowledge or notice of any facts concerning the financial condition of the city of Santa Cruz, other than statements made by Coffin & Stanton in the circular, except that we looked up the matter so far as population was concerned, but nothing more. We had no knowledge of the indebtedness of the city other than what was stated by Coffin & Stanton. We had had business with Coffin & Stanton before. We had held notes of theirs, prior to July 10, 1894. I was not personally acquainted with any of the members of the firm of Coffin & Stanton until July 18, 1894. None of the officers of the bank were. The money was not paid to Coffin & Stanton at Hagerstown; it was paid through the First National Bank of New York.

I do not remember distinctly the contents of the circular referred to in this letter. I think it stated the indebtedness of the city of Santa Cruz, and that the bonds were issued to refund a certain indebtedness of the city. I am not sure whether we got an attorney's opinion regarding the validity of the issue. We often do get the attorney's opinion. It is a rule to get the opinions, if possible, at the bank. I do not remember whether we requested any further particulars. Coffin & Stanton paid us nothing on the note of July 18, 1894.

203 That JONAS H. BROOKES, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

I am cashier of the Albany City national bank, at Albany, New York. That bank came into possession of bonds of the defendant purporting to be executed by its officers on the sixteenth day of April, 1894. Bonds numbers 253 and 244, series 26. Bonds numbers 235 to 243, both inclusive, of series 27. Bonds numbers 280 to 288, both inclusive, of series 32.

Our bank made two loans to Coffin & Stanton on July 25, 1894, taking among other collaterals these bonds as security. Two notes were given, one by Coffin & Stanton, direct to the bank, and one by Charles B. Ludwig, and guaranteed by Coffin & Stanton. The notes are in the words and figures following:

No. —. Due —.

$25,000. NEW YORK, *July* 25, 1894.

Five days after demand, without grace, after date, and upon return of security given, we promise to pay to Albany City national bank or order twenty-five thousand dollars for value received, with interest at five per cent. per annum, having deposited herewith as collateral security $15,000 New York City Suburban Water Co. 1st

6 per cent.; $11,000 City of Santa Cruz, Cal., refunding 5 per cent.; $7,000 New Utrecht, New Yo;k, 5 per cent. St. Imp. 5 per cent. bonds, with authority to sell the same, or other security subsquently substituted at the board of brokers, or at public or private sale at their option, on the non-performance of this promise; applying the net proceeds to the payment of this note, including interest
204 and accounting to us for the surplus, if any. In case of deficiency, we promise to pay to the holder of this note the amount of such deficiency, forthwith after such sale, with legal interest.

COFFIN & STANTON.

No. —. Due —.

$25,000. JULY 25, 1894.

Five days after demand without grace after date, and upon return of security given, we promise to pay to Albany City national bank, or order, twenty-five thousand dollars for value received, with interest at five per cent. per annum, having deposited herewith as collateral security: $11,000 New York City Suburban Q. Co. 1st 6 per cent.; $9,000 City of Santa Cruz, Cal., refunding, 5 per cent.; $12,000 New Utrecht, New York, 5 per cent. St. Imp. bonds, with authority to sell the same, or other security, subsequently substituted, at the board of brokers, or at public or private sale at their option, on the non-performance of this promise; applying the net proceeds to the payment of this note, including interest and accounting to us for the surplus, if any. In case of deficiency we promise to pay to the holder of this note the amount of such deficiency, forthwith after such sale, with legal interest.

CHAS. B. LUDWIG.

(Endorsed:) We guarantee payment of within note. Coffin & Stanton.

Counsel for defendant consents that copies of said notes be inserted.

205 At the time these notes were executed and delivered to the bank, $50,000 was advanced on account thereof, no interest was discounted at the time. We held a note dated February 12, 1894, for $25,000 signed by Coffin & Stanton, upon which they paid on July 3d $7,000, and on July 7th $5,000, leaving a balance of $13,000 due. We held at the same time another note dated March 16, 1894, for $25,000 made by C. B. Ludwig, and guaranteed by Coffin & Stanton, on which there had been paid on July 13th $7,000.

At the time of the execution of these two notes of July 25, 1894, the bank advanced Coffin & Stanton $19,000 of fresh money and a renewal of the two notes upon which there was a balance of $31,000 due. On the note made by Coffin & Stanton for $25,000 we held $15,000 New York City Suburban Water Company bonds, first-mortgage bonds, $11,000 city of Santa Cruz refunding bonds, and $7,000 New Utrecht street-improvement bonds. The $15,000 Sub-

urban Water bonds we bought in by an agreement with the receiver of Coffin & Stanton at sixty cents on the dollar; the seven New Utrecht bonds we sold to a broker in New York, with the consent of the receiver of Coffin & Stanton, at 101 or 103, and the proceeds were applied on the note.

On the note made by Charles B. Ludwig of July 25, 1894, we held $11,000 New York City Suburban Water Company bonds, $9,000 city of Santa Cruz refunding bonds, and $12,000 New Utrecht street-improvement bonds. The New York City Suburban Water Company bonds were bought in the same manner as the others, at sixty cents on the dollar, and the proceeds applied on the
206 notes. The $13,000 New Utrecht bonds were sold like the others at 101 or 103, and the proceeds applied on the note. The Santa Cruz bonds were sold through Muller & Son, at New York, on September 16, 1896, at public auction; they brought sixty cents on the dollar, and the proceeds have been credited on the notes.

The Mr. Ludwig who made that note was a clerk in the employ of Coffin & Stanton. When we made this new loan, represented by the two promissory notes of July 25, 1894, that was the first time we had taken the Santa Cruz refunding bonds. We had the other securities described in those notes to secure the previous notes.

At the time we took these Santa Cruz refunding bonds Coffin & Stanton stated to me orally in their office, that they bought the bonds direct from the city. That is all that the bank knew in regard to their title before we made this loan. Regarding the financial condition of the defendant, we knew nothing, other than the statement which Coffin & Stanton published as to the condition of the city. We received this before we made the loan. The statement referred to is the same statement hereinbefore set out at page 72, line 21 hereof.

They also made an oral statement to me regarding the financial condition of the city.

Cross-examination:

On the note of Coffin & Stanton, dated February 13, 1894, of $25,000, we held $10,000 Illinois Central bonds and $10,000 New Utrecht bonds, and $10,000 New York City Suburban Water Company bonds, originally, and I think upon the payment of $12,000 on July 3d and July 17th, we had surrendered the $10,000
207 Illinois Central bonds, and a part of the New Utrecht bonds.

On the other note of March 6, 1894, made by Ludwig, and guaranteed by Coffin & Stanton, we originally held $20,000 New Utrecht bonds and $15,000 New York City Suburban Water Company. There had been paid on that loan on July 13, $7,000, and we had surrendered a part of the New Utrecht bonds on this payment. I was in New York on July 25, 1894, and visited Coffin & Stanton. They then owed $31,000 and proposed to put up $20,000 Santa Cruz bonds, to be divided between the two loans in proportion, to secure the separate loans, to correspond with the two loans. The net result of it was that we advanced $1,900 of money on $20,000

Santa Cruz bonds, and those other bonds were already in Albany in our possession. They drew on us at sight for $19,000, with the $20,000 bonds attached, and sent them to Albany and the draft was paid the next day.

I did not at that time know that Coffin & Stanton were the fiscal agents of the city of Santa Cruz. I saw the circular that they issued before I made the loan.

Mr. Stanton had told me that they purchased the bonds outright. The bonds were sold by us September 16, 1896; Albert H. Waite, the plaintiff in this action, bought them at public sale. I received Mr. Waite's note for the proceeds of the sale.

That WILLIAM J. NEVIUS, a witness on behalf of plaintiff, being duly sworn, testifies as follows:

I am loan clerk in the first National Bank of New York. On July 18, 1894, the First National Bank of New York paid to Coffin & Stanton $4,921.61 for the account of the First National
208 Bank of Hagerstown, Md. I took in return for that money, the note of Coffin & Stanton for $5,000 for the account of the First National Bank of Hagerstown. I took at the same time from Coffin & Stanton six bonds of the city of Santa Cruz, described therein as the collateral security for such note. Those bonds are numbers 83, 84, 85, 86, 87, of $1,000 each, due in 1904, and number 299, of $1,000, due in 1928.

That JOHN H. FERRIS, a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

I am vice-president of the South Norwalk Savings Bank of South Norwalk. On July 26, 1894, the South Norwalk savings bank came into possession of eleven bonds purporting to be executed by the officers of the defendant, on the sixteenth day of April, 1894, numbers 25, 26, 95, 97, 98, 99, 154, 155, 158, 305, and 306. On behalf of the bank, I made a loan to Coffin & Stanton, New York, of $10,000, receiving a note in the words and figures following:

No. —. Due ——.

$10,000. NEW YORK, *June* 30, 1894.

On demand, after date, and upon return of security given, we promise to pay to South Norwalk savings bank, Conn., or order, ten thousand dollars, for value received, with interest at six per cent. per annum, having deposited herewith as collateral security: $11,000 city of Santa Cruz, Cal., 5's, with authority to sell the same, or other security subsequently substituted, at the board of brokers, or at public or private sale, at their option, on the non-performance of this
209 promise; applying the net proceeds to the payment of this note, including interest, and accounting to us for the surplus, if any. In case of deficiency, we promise to pay to the holder of this note the amount of such deficiency forthwith after such sale, with legal interest.

COFFIN & STANTON.

We received as collateral security for this note, these eleven bonds. I dealt with Mr. Coffin. They showed me the attorney's opinion of the bonds at the time. I looked the matter up with them at their office, and I was satisfied from what information they gave me and the circular they showed me at the time, that it was a good collateral loan.

I knew nothing of their ownership of the bonds. They did not make any statement to me as how they came into possession of them. I did not see the bonds in their possession at any time. They were sent to South Norwalk the next day after I made the loan, with draft attached and also the promissory note. I made no investigation in regard to the financial condition of the city of Santa Cruz other than that which I made during the conversation with Coffin & Stanton. The circular hereinbefore set out at page 72, line 21, hereof, is similar to the circular they showed me. The bank still holds those bonds and has taken no steps to convert its pledge into a title, or to dispose of its security. Coffin & Stanton have not paid the promissory note referred to.

Cross-examinntion:

When I made this loan I received no other collateral security besides the eleven Santa Cruz bonds. We held two notes of Coffin & Stanton, made prior to this loan, one in April and one in February. Those notes are still due.

We have been dealing with Coffin & Stanton for ten or
210 twelve years. We have presented a claim to the receiver, of this loan of $10,000, no dividends having been paid. The opinion of a New York lawyer was given as to the legality of the Santa Cruz bonds. I did not request the opinion of a Santa Cruz or California lawyer. Mr. Coffin gave me an account of his trip to California. I knew that Coffin & Stanton did a large business in municipal bonds at the time, but I did not know that they were the fiscal agents for quite a number of towns. I did not know, nor did they ever inform me, that they were the fiscal agents of the city of Santa Cruz; on the contrary, I think that they told me that they absolutely bought the bonds. Mr. Coffin told me that.

That BENJAMIN F. PETHERAM, a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

I am cashier of the Bank of Skaneateles of Skaneateles, New York. The bank made a loan to Coffin & Stanton on their note of $10,000 about the sixth or seventh of June, 1894, and five bonds purporting to be executed by the officers of the defendant on the sixteenth day of April, 1894, being numbers 102, 103, 104, 105, and 106, were given to us as collateral security for that note and forwarded, with draft attached, through the bank of the Manhattan Company of New York to us by express. The note was in the words and figures following:

No. —. Due —.

$10,000. NEW YORK, *June* 6, 1894.

On demand (fifteen days' call), after date, and upon return
211 of security given, we promise to pay to Bank of Skaneateles, Skaneateles, or order, $10,000, for value received, with interest at five per cent. per annum, having deposited herewith as collateral security:

$7,000 City of Santa Cruz., Cal., 5's,
$5,000 Illinois Central 4's,

with authority to sell the same, or other security subsequently substituted, at the board of brokers, or at public or private sale, at their option, on the non-performance of this promise; applying the net proceeds to the payment of this note, including interest and accounting to us for the surplus, if any. In case of deficiency we promise to pay to the holder of this note the amount of such deficiency forthwith after such sale, with legal interest.

COFFIN & STANTON.

(Endorsed.)

P'd on within note Nov., '87–'94	$4,991.25
" " " " Oct. 7 by acceptance of Santa Cruz bonds	3,000
" " N. Y. Sub. Water Co.	1,300

The seven bonds of the city of Santa Cruz, in regard to which I have testified, together with five 4 per cent. Illinois Central bonds, were given to the bank as collateral security at the time this note was executed. Coffin & Stanton drew on us for the amount described in this note, $10,000, and we paid the draft. We had had other transactions with Coffin & Stanton, but this note was not a renewal of any previous obligation of theirs; it represented
212 a fresh advance of $10,000. The transaction was entirely by mail. We had a letter from them that they owned the bonds. The letter was as follows:

Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *June* 1, 1894.

Bank of Skaneateles, Skaneateles, N. Y.

GENTLEMEN: We have yours of the 31st ult., and in accordance therewith, we beg to submit you a proposition for a loan of $10,000, to run, three, four, or six months, or at fifteen days' call, at the rate of 5 per cent., and offer you as collateral security thereto:

$6,000 Illinois Central gold 4 per cents, due 1953, at 98, and
$7,000 American Debenture Collateral Trust gold 5's, at 93,

or

$5,000 Illinois Central gold 4 per cents, due 1953, at 98, and
$7,000 City of Santa Cruz, Cal., gold, refunding, 5 per cents, at 101.

You are doubtless familiar with the Illinois Central 4's and the

American Debenture Collateral Trust 5's, both of which are quoted upon the New York stock exchange, the last sales for them having been made at about the figures above quoted. We enclose you marked clipping of a New York paper showing quotation for the above.

We hand you herewith a circular describing the Santa
213 Cruz bonds. This is a prosperous city, located in the vicinity of San Francisco. It is situated in a highly improved portion of the State of California, and is one of its thriving cities. These bonds were purchased by us after a thorough investigation made by our Mr. Stanton upon the ground, and we have no hesitation in recommending them to you as an excellent security.

If there is any further information you may desire concerning any of the above bonds, we shall be pleased to furnish the same to you.

Trusting that you may favorably consider either one of the foregoing propositions, we remain,

Yours very truly, COFFIN & STANTON.

(Inclosure.)

I have no recollection of any other circular being received with that letter. Regarding the financial condition of the city of Santa Cruz, I wrote to a banker in Santa Cruz, and simply got a little printed pamphlet in response. The promissory note for which these bonds were given as collateral has not been paid. We have realized $4,991.25 on the Illinois Central 4 per cent. bonds which we had. We originally had $7,000 of Santa Cruz bonds. Coffin & Stanton substituted $2,000 of New York City Suburban Water Company bonds for two of them, and in accordance with the decree of the court, we took the New York City Suburban Water Company bonds at 65 and the Santa Cruz $5,000 bonds at 60, and indorsed them at sixty cents on the dollar on the note, in accordance with the agreement with the receiver of Coffin & Stanton. We credited these amounts on the note.

214 Cross-examination:

At that time we held no other notes of Coffin & Stanton. They owned us nothing at the time we made this loan of $10,000; none of the officers of our bank knew Coffin & Stanton personally. We have known them from reputation for eight of ten years. We did not get the opinion of any attorney as to the validity of these bonds. We relied solely upon Coffin & Stanton's statement. I did not know that they, at the time of this negotiation, were the fiscal agents of the city of Santa Cruz. They drew two drafts on us for this $10,000, and we paid them. We had never before held any bonds of the city of Santa Cruz of this issue. We had had other bonds of the city before this.

That JOHN B. DAVIS, a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

I am cashier of the Farmers' national bank, at Mt. Holly, New Jersey. The Farmers' National Bank, of New Jersey, came into possession of bonds Nos. 96, 156, 276, and 313, purporting to be executed by the officers of the defendant on the sixteenth day of April, 1894. We made a loan to Coffin & Stanton of $10,000, on January 30, 1894, taking a secured note, and when that note matured, they offered us another note in exchange for it, dated June 2, 1894, as renewal for that note, and gave us $1,000 Santa Cruz bond, with other collateral, and on June 3, 1894, they substituted a $1,000 Santa Cruz bond for a portion of the collateral, and on June 23, 1894, they substituted $2,000 Santa Cruz bonds for other collateral.

215 The note given by Coffin & Stanton to the bank is in the words and figures following:

No. —. Due Oct. 2–5, '94.

$10,000. NEW YORK, *June* 2, 1894.

Four months after date, and upon return of security given, we promise to pay to Farmers' national bank, Mt. Holly, N. J., or order, ten thousand dollars, for value received, having deposited herewith as collateral security:

3,000 Illinois Cent. 4's,
2,000 City of Harriman, 6's,
8,000 American Deb. 5's,
1,000 Santa Cruz, Cal., 5's,

with authority to sell the same, or other security subsequently substituted, at the board of brokers, or at public or private sale, at their option, on the non-performance of this promise; applying the net proceeds to the payment of this note, including interest, and accounting to us for the surplus, if any. In case of deficiency, we promise to pay to the holder of this note the amount of such deficiency, forthwith after such sale, with legal interest.

COFFIN & STANTON.

(Endorsed:) 9, 23, '95.

8,000 Debenture Co. 5's, at 5	400
4,000 Santa Cruz 5's, at 60	2,400
2,000 N. Y. C. Suburban 6's, at 65	1,300
	$4,100

The securities originally deposited to secure this note, which were withdrawn by Coffin & Stanton and replaced by the bonds
216 in question, were three $1,000 bonds of the Illinois Central Railroad Company. The endorsement on the back of the note means that the receiver of Coffin & Stanton notified us that a decree of the court had authorized him to value the Santa Cruz bonds at 60, and he reduced them to possession by crediting them

at 60 on the back of the note. There are credits for New York City Suburban bonds and Debenture Company 5's on the back of the note. The debenture bonds were originally held with the note, and the New York Suburban bonds were substituted. At the time the bank loaned this money to Coffin & Stanton, it had no notice or knowledge of any facts tending to show anything in regard to the title of Coffin & Stanton to these bonds. The only notice or knowledge we had in regard to the financial condition of the defendant was what Coffin & Stanton mentioned here in their letter. The letter simply speaks of the general condition of the city of Santa Cruz, describing it as one of California's most flourishing towns, but gives no statement of its indebtedness. I did not know of its indebtedness at the time of this loan.

Cross-examination:

The credit given on this note amounted to $4,100; that is given only by crediting the value of the securities on the note. No cash has been paid. This was the first transaction we have ever had with Coffin & Stanton. We made no inquiries about the legal title to the bonds, nor in regard to the legality of the issue.

We knew nothing more about the firm of Coffin & Stanton at that time than what we got from Dun's and Bradstreet's reports.
217 We knew of them by reputation. We did not know that they acted as the fiscal agents for different cities and municipalities, nor that they were fiscal agents for the city of Santa Cruz. I knew nothing about the city of Santa Cruz. We did not exactly make this loan blindly without knowing the value of the collaterals. We took their statement that they made in regard to the value of the Santa Cruz bonds, and presumed that they were honorable gentlemen, and acted on their statement.

We did not verify it. They gave a valuation of the Santa Cruz bonds at 101, as stated in one of their letters.

That FREDERICK W. HILL, a witness on behalf of plaintiff, being duly sworn, testifies as follows:

I reside at Bangor, Maine, and am director in the Kenduskeag national bank. By letter dated May 15, 1894, Coffin & Stanton wrote the Kenduskeag national bank, inquiring if they were in a position to entertain a proposition for a collateral time loan. After some correspondence, on May 29, 1894, the bank accepted by telegram the proposition of Coffin & Stanton to take their promissory note of $10,000, on six months, with interest at the rate of 5 per cent., with twelve gold refunding 5 per cent. bonds of the city of Santa Cruz, Cal., for $1,000 each, as collateral security. The note and bonds purporting to be executed by the officers of the defendant on April 16, 1894, being numbers 136, 137, 138, 145, 147, 148, 149, 150, 151, 152, and 153, were delivered to the bank in due course.

The note bore date May 31, 1894. The money was paid on
218 Coffin & Stanton's draft on May 29, 1894, for $10,000, by the check of the bank for $10,000, dated May 31, 1894, which was paid in due course. No part of the principal or interest due

on the loan made to Coffin & Stanton has been paid. The bank is still in possession of the bonds. At the time the bank came into possession of these bonds, it had no specific knowledge as to the title of the persons from whom it received possession, or as to the relations between Walter Stanton and the defendant, but assumed, as Coffin & Stanton were able to furnish these bonds as collateral for their notes, they were rightfully in possession of them. As to the indebtedness of the defendant existing at the time these bonds were taken, W. H. S. Lawrence, then cashier of the bank, since deceased, telegraphed to a prominent resident of Santa Cruz, A. P. Swanton, and inquired as to the bonds, and was in receipt of a reply that the bonds were good. The bank also relied upon the circular of Coffin & Stanton, showing the financial condition of the city of Santa Cruz.

Cross-examination:

The pledge has not been reduced to absolute ownership. The bonds are still held as collateral for the note.

The negotiations which led up to the making of the loan were entirely by correspondence between W. H. S. Lawrence, the cashier of the bank, under my personal direction, and Messrs. Coffin & Stanton. On the part of the borrower, the bank knew only the firm of Coffin & Stanton. The loan represented $10,000 in cash, money advanced at the time. The bank never had had any business with Coffin & Stanton up to this time, during my ten
219 years' connection with it, nor afterwards. The bank received no letters, printed statements, circulars, opinion of attorneys, or copies of opinions of attorneys concerning said bonds, or the financial condition of the city of Santa Cruz, other than the letters and circulars hereinafter set out.

We had no knowledge regards the bonds of the city of Santa Cruz, except the recommendations of Coffin & Stanton, which firm we supposed to be perfectly reliable, having heard no intimation to the contrary at that time, and information which we got from Mr. A. P. Swanton, a prominent resident of Santa Cruz, Cal., in answer to an inquiry as to the value of the bonds. We had no other knowledge regarding the value of the bonds, except the personal knowledge of the city by Mr. H. H. Fogg, one of the directors of the bank. I do not recall having seen or heard of any circular stating that Coffin & Stanton were the fiscal agents of the city of Santa Cruz, and never heard that they were such agents. At the time of taking these bonds, the bank held no other bonds of the city of Santa Cruz; it never held any bonds of the city of Santa Cruz before that time. We have made no effort to collect the note because of the notorious insolvency of the makers. We expect to realize upon the collateral. The correspondence and circulars referred to by me are the following:

A letter of Coffin & Stanton to Kenduskeag national bank, as follows:

220 Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *May* 15, 1894.

Kenduskeag national bank, Bangor, Maine.

GENTLEMEN: If you are at the present time in a position to entertain an application for a col-ateral time loan, kindly advise us, and we shall be pleased to submit you a proposition.

We feel confident that we can satisty you as to collateral, and offer you an attractive rate.

Yours very truly, COFFIN & STANTON.
T.

Credited and advised, 5–17.

Letter of Coffin & Stanton to Kenduskeag national bank, dated May 19, 1894, as follows:

Accepted May 29.

Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *May* 19, 1894.

Kenduskeag national bank, Bangor, Maine.

GENTLEMEN: We beg to acknowledge *to* receipt of your favor of the 17th inst., and in accordance therewith we submit you a proposition for a loan of $10,000 to run three, five, or six months, or on fifteen days' call, at the rate of 5 per cent. per annum, and offer you as collateral security thereto:

221 $12,000 city of Santa Cruz, Cal., gold refunding 5 per cents, at 101.

We enclose circular describing this issue, giving all the necessary details concerning the same. Santa Cruz is a prosperous city, within the immediate vicinity of San Francisco. The city owns its own water plant, the supply of which is brought by gravity from the mountains, fourteen miles distant. Water is an absolute necessity in Santa Cruz, and is in demand for irrigation, in addition to its ordinary uses.

The population supplied by this water system is about eleven thousand. The figures of population on the enclosed circular are of the corporate limits of the city only. These limits have not been enlarged for many years. The inhabitants of the city of Santa Cruz are principally from New York and the New England States. Santa Cruz is located in the most highly improved portion of the State of California, and is one of its most thriving cities. If you desire any further information concerning these bonds, we shall be pleased to furnish the same to you.

Trusting that this proposition may commend itself to your good judgment, and awaiting an early reply, we remain,

Yours very truly, COFFIN & STANTON.

(Inclosure.)

The circular of Coffin & Stanton, relating to Santa Cruz bonds, is in the same words and figures as the circular hereinbefore set out, commencing at page 72, line 21, hereof.

222 Letter of Coffin & Stanton to Kenduskeag national bank, dated May 25, 1894, as follows:

Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *May* 25, 1894.

Kenduskeag national bank, Bangor Maine.

GENTLEMEN: We beg to acknowledge the receipt of your favor of the 23d inst., and note your remarks concerning note and collateral recently offered to you for a loan of $10,000.

In reply thereto, we beg to state that we propose giving you our note, duly signed by the firm. You will find us rated in any of the commercial agencies.

We are not acting as brokers in this matter. Neither are we in any manner connected with the New York stock exchange, dealing as we do, almost exclusively in municipal securities.

Trusting that we may hear favorably from you, we remain,

Yours truly, COFFIN & STANTON.

Telegram of A. P. Swanton to Lawrence, dated May 28, 1894, as follows:

The Western Union Telegraph Company.

5, 28, 1894.

Received at 2.54 p. m.
Dated Santa Cruz, Calif., 28.

To W. H. S. Lawrence, Bangor, Me.:

223 Yes; two offers have been made here for them, but some eastern bond agents have option.

A. P. SWANTON.

That SAMUEL W. GOODWIN, witness on behalf of plantiff, being duly sworn, testifies as follows:

My name is Samuel W. Goodwin. I am president of the National Bank of Waterville, of Waterville, N. Y. The bank come into possession of a refunding bond of the city of Santa Cruz, purporting to be executed by its officers on April 16, 1894, said bond being number 360. It was given as collateral security to a note of Coffin & Stanton for $5,000, said bond having been substituted by Coffin & Stanton for an Atchison, Topeka & Santa Fe Railroad bond of $1,000, as per letter from Coffin & Stanton of May 3, 1894, which reads as follows:

Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *May* 3, 1894.

National Bank of Waterville, Waterville, N. Y.

GENTLEMEN: We send you tonight, under separate registered cover, $1,000 Santa Cruz, Cal., refunding 5 per cent. bonds, which kindly exchange, as per substitution blank enclosed, for $1,000 Atchison, Topeka & Santa Fe bond held by you as collateral to our loss of November 20, 1893, for $5,000.

Kindly return the latter bond by registered mail, we insuring the same during transit. We enclose herewith postage for that purpose.

224 We regret exceedingly being obliged to disturb this loan and would not do so could we avoid it.

Yours truly, COFFIN AND STANTON.

T.

The bank held as additional security to this $5,000 note two $1,000 Atchison, Topeka & Santa Fe Railroad bonds, which were sold and the proceeds amounting to $1,280 were applied on the $5,000 note. The bank is still in possession of the bonds. In the year 1890, the National Bank of Waterville discounted a note for Coffin & Stanton, taking as collateral security for said note, $4,000 of the city of Santa Cruz bonds. I made a thorough investigation of the bonds at that time, having sent to me from Coffin & Stanton copies of letters from G. Bowman, then mayor of Santa Cruz, and also being told by Mr. Stanton that they had bought the bonds, and that they were the actual owners thereof, and they did not at that time handle any bonds except such as they were the actual owners of.

I understand and believed that Coffin & Stanton were the actual owners of said bond of $1,000, and that the statement made by Mr. Stanton was true. The bank made no investigation with reference to the indebtedness of the defendant existing at the time these bonds were taken, as we relied upon the previous representations and the investigation then made regarding Santa Cruz and other bonds and upon the letter and prospectus of the Santa Cruz bonds.

225 Cross-examination:

In addition to the Atchison, Topeka & Santa Fe Railroad bonds already spoken of, we held as collateral $5,000 Fort Scott water bonds. The Fort Scott water bonds we still held, but we think them to be of little or no value.

None of the collateral originally held by us was released, except by the exchange of one $1,000 Atchison, Topeka & Santa Fe Railroad bonds for one Santa Cruz bond as herein stated.

The Santa Cruz bond was sold at public sale in New York city and the National Bank of Waterville became purchaser on that sale, and the absolute owner thereof.

About May 4, 1894, I received a letter from Coffin & Stanton, stating that they desired to exchange the Atchison, Topeka & Santa

Fe bond we then held for the $1,000 Santa Cruz bond which we now hold. Attached to the letter was a prospectus of the Santa Cruz bonds, and on the strength of the statement our bank made the exchange, and thus came into possession of the Santa Cruz bond as collateral security. The letter from Coffin & Stanton to the bank was the letter hereinbefore referred to. A printed prospectus enclosed therewith was in the same words and figures hereinbefore set out at page 72, line 21 hereof. I conducted the negotiation on the part of the National Bank of Waterville, and by correspondence with Coffin & Stanton. The loan for which the Santa Cruz bond was taken as collateral represented an actual loss of $5,000 made November 20, 1893. From 1890 up to the time of the failure of Coffin & Stanton, there was no time when our bank did not hold from $3,000 to $10,000 of the firm's paper.

226 At the time of taking the Santa Cruz bonds as collateral the bank did not hold any of Coffin & Stanton's obligations which were due and unpaid. The information given or statements made to the bank concerning the refunding bonds of the city of Santa Cruz prior to the time of their being taken by the bank were the information and statement contained in the letter and prospectus hereinbefore set out. The information to the bank concerning the financial condition of the city of Santa Cruz was the information contained in the prospectus hereinbefore set out. The only letters, printed statements, circulars or opinions concerning the said bonds or the financial condition of the city of Santa Cruz which the bank received were the letter and prospectus hereinbefore set out and the copy of the letter of G. Bowman, the mayor of Santa Cruz, to Coffin & Stanton, dated May 22, 1890, in the following words and figures:

SANTA CRUZ, CAL., *May* 22, 1890.

Messrs. Coffin & Stanton.

GENTLEMEN: Your telegrams today received. Your interests are our interests in the matter referred to. We will use every effort to counteract the influence which is being made.

The Santa Cruz water bonds you hold are perfectly good, substantiated by 95 per cent. of the inhabitants of this city, notwithstanding the reports of parties who are trying to cast odium on same.

Santa Cruz is going ahead fast, improvements of all kinds are booming, consequently the city's bonds are getting stronger every day.

227 If you see no objections would you please give the name of the official. Is it not an *ex officio*, who, for a probable reason, lost his place?

Yours, etc.,

G. BOWMAN, *Mayor*.

P. S.—To partially show the state of the water-bond question, this city was assessed extra the last year about $40,000, and I venture to assert that there is no city of our population who has as small — of delinquents in the United States. Our tax was more than double,

but our people met it grandly. The cry was all for the interests of our new water works. More you cannot say for a place.

Yours, etc., G. B.

We relied upon the prospectus and previous investigation of other Santa Cruz bonds, and the statement of Coffin & Stanton, and the letter of G. Bowman, mayor. The knowledge we had concerning the value of the bonds at the time they were taken by the bank and the financial condition of the city of Santa Cruz was derived from the prospectus sent us by Coffin & Stanton and the knowledge obtained in the previous investigation. At the time of the taking of this Santa Cruz bond by the bank it held no other bonds of the city of Santa Cruz; it held at a prior time four $1,000 bonds of the city of Santa Cruz. At the time of taking this refunding bond of the city of Santa Cruz, the bank did not know that Coffin & Stanton were fiscal agents for the city of Santa Cruz. When the loan
228 for which this bond was collateral was made, we sent a draft to the firm of Coffin & Stanton for the same, being $5,000, less the interest.

A claim has been presented to the receiver of Coffin & Stanton, but no payment has been made.

That EDWARD L. SPALDING, a witness on behalf of plaintiff, being duly sworn, testified as follows:

I reside at Webster, Mass., and am cashier of the First National Bank of Webster. The bank held notes of Coffin & Stanton, bankers, of New York, on which it held as collateral certain bonds. Those bonds which we originally held Coffin & Stanton recalled and substituted in their place four refunding bonds of the city of Santa Cruz, purporting to be executed by its officers on the sixteenth day of April, 1894, said bonds being numbers 22, 277, 78, and 79, of $1,000 each. A part of the loan for which these bonds were collateral, has been paid. They paid $2,400 in cash on October 2, 1894. The bank is still in possession of the bonds. The knowledge that the bank had when it came into possession of these bonds, relative to the title of the same of Coffin & Stanton was that they were advertised by Coffin & Stanton for sale. They claimed that they were worth in market 101 to 102, and they desired to exchange them for collateral which the bank held. The bank had nothing to do with Walter Stanton individually. It made no investigation with reference to the indebtedness of the defendant, but had the printed statement of Coffin & Stanton, showing that the net debt of the defendant was $40,000.

229 Cross-examination:

When the loan referred to was made to Coffin & Stanton the bank held bonds of the city of Harriman, Tennessee, New York City Suburban water bonds, and Illinois Central Railroad bonds as collateral. When $2,400 was paid two Illinois Central bonds were withdrawn. The bank loaned Coffin & Stanton $10,000, and took their notes with the securities just mentioned as collateral. After the failure of Cof-

fin & Stanton the bank sold $16,500 of the New York City Suburban bonds, $3,000 city of Harriman bonds, and $4,000 city of Santa Cruz bonds at public auction, on December 19, 1894, and bid in the same for $10,440. The board of directors conducted the negotiations on the part of the bank, and the borrowers themselves on their part. We received from Coffin & Stanton a letter as follows:

Loan department.

Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *Feb.* 20, 1894.

First national bank, Webster, Mass.

GENTLEMEN: Will you kindly advise us if you are in a position to entertain an application for a collateral loan. If so, we would be pleased to submit you a proposition. We think we can satisfy you both as to rate and collateral.

Yours truly, COFFIN & STANTON.
T.

230 And another letter as follows:

Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *Feb.* 28, 1894.

First national bank, Webster, Mass.

GENTLEMEN: We have your favor of the twenty-seventh inst., and in accordance therewith, we have this day drawn upon you, through the Manhattan Co. bank of this city, for $10,000, with $7,000 Illinois Central gold 4's and $5,000 city of Harriman, Tenn., gold 6's attached. We hand you herewith our note for $10,000, under date of March 1, 1894, to run four months at the rate of 5 per cent., which we trust will be satisfactory to you.

Kindly honor our draft upon presentation, and oblige,

Yours truly, COFFIN & STANTON.
T.

(Inclosure.)

The original loan was for cash. At the time of the taking of the Santa Cruz bonds as collateral, the bank held obligations of Coffin & Stanton which were due and unpaid. Coffin & Stanton, as makers and endorsers of notes, were indebted to the bank in the sum of $20,000. The information given or statements made to the bank concerning the refunding bonds of the city of Santa Cruz prior to their being taken by the bank were a letter in the words and figures following:

231 Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *May* 3, 1894.

First national bank, Webster, Mass.

GENTLEMEN: We send you tonight, under separate cover, $1,000 Santa Cruz, Cal., refunding 5 per cent. bond, which kindly exchange

as per substitution blank enclosed for $1,000 Illinois Central 4 per cent. bond, held by you as collateral to our loan of March 1, 1894, for $10,000. Please send the latter bond by return registered mail, we to insure the same during transit. We enclose herewith postage for that purpose. Santa Cruz is located within a very short distance of San Francisco and is one of California's most active towns. We enclose herewith a circular, giving more detailed description. We regret exceedingly being obliged to disturb this loan and would not do so now were it avoidable.

Yours truly, COFFIN & STANTON.
T.

Enclosures.

and a circular which is in the same words and figures as the circular hereinbefore set out commencing at page 72, line 21, hereof.

The bank had no other information regarding the financial condition of the city. The only knowledge we had concerning
232 the value of the so-called refunding bonds was the knowledge derived from the circular hereinbefore referred to and from two letters of Coffin & Stanton, as follows:

Coffin & Stanton, bankers, 72 Broadway.

NEW YORK, *Aug.* 6, 1894. ——, 196-.

First national bank, Webster, Mass.:

We wish to withdraw from loan Apr. 27, '94, of $10,000 the following securities:

2,000 Illinois Cent. 4's, 98..... 1,960

and substitute:

2,000 Santa Cruz 5's, at 101..... 2,020

Yours respectfully, COFFIN & STANTON.
J. O. HALLASON.

Coffin & Stanton, bankers, 72 Broadway.

NEW YORK, *May* 3, 1894. ——, 167-.

First national bank, Webster, Mass.:

We wish to withdraw from loan 4, 1, '94, of $10,000, the following securities:

1,000 Ill. Central gold 4's, at 100..... $1,000

and substitute:

233 1,000 Santa Cruz, Cal., 5's, at 101..... $1,010

No. 278, due 1925.

Yours respectfully, COFFIN & STANTON.
A. F. BABCOCK.

We had no other knowledge regarding the financial condition of the city of Santa Cruz. We have no letter or circular from Coffin

& Stanton in which they speak of themselves as being, or having been, the fiscal agents of the city of Santa Cruz. The bank never held any bonds of the city of Santa Cruz before that time.

At the time of the taking of the refunding bonds by the bank it did not know that Coffin & Stanton were fiscal agents of the city of Santa Cruz. The original loan was paid by us by a New York draft for $10,000, less interest for four months. Coffin & Stanton's note was dated March 1, 1894, and renewed July 3, 1894. The notes were sent to New York city for collection and the indorsed note of $10,000 was protested.

That LUKE HANSARD, a witness on behalf of plaintiff, being duly sworn, testifies as follows:

I am manager of Martin's Bank, Limited, of London. On the twenty-eighth of May, 1894, we made Coffin & Stanton, Limited, of London, an advance of £5,000 upon $25,000 city of Santa Cruz five per cent. bonds as per Pledge note signed by them. The Pledge note is signed by the officials of Coffin & Stanton, Limited, of London, and is in the words and figures following:

234 Form No. 6.

LONDON, 28*th May*, 1894.

To Martin's Bank, Ltd., 68 Lombard street.

GENTLEMEN: In consideration of your advancing to us the sum of five thousand pounds (£5,000) on demand from this date, at interest at five (five) per cent. per annum, we deposit with you the securities enumerated on the other side, which we hereby guarantee to be of the present value there stated; and we undertake to maintain from time to time a margin in value of ten per cent. on the amount of your cash advance by placing additional security in your hands should this become necessary through depreciation of those which we now lodge or which may hereafter, either by way of substituted or additional security be lodged with you, in default whereof, and in default of our repaying to you the amount owing to you as before mentioned, or in default of our maintaining margin as above, you are hereby authorized, without any further authority, to realize the securities you may hold for the time being, and the purchaser shall not be concerned to inquire whether there has been any such default or whether your right to realize the securities has arisen. You shall hold us at liberty to withdraw any of the above securities in exchange for others of at least equal value, or on payment of an equivalent part of your advance.

It is hereby agreed that the securities — have referred to
235 will be held by you, generally, against any advances which we may be under to you as well as against this particular loan.

(Signed) COFFIN & STANTON, LIMITED.
HERBERT B. MONTEFIORE,
CHAS. B. LUDWIG, *Directors.*

(Stamp 6d.)

Description of securities—value.

$25,000 city of Santa Cruz, California, five per cent. municipal bonds at 100, £5,000.

Exhibit No. 1.

The security for the aforesaid loan of £5,000 was returned to Coffin & Stanton, Limited, of London, as follows: $3,000 on the thirty-first of May, $2,000 bonds were exchanged for $2,000 bonds of city of Santa Cruz, the said $2,000, six per cent. being pledged as part cover for the loan made to Coffin & Stanton on the tenth of April, 1894, for 22,400. The original pledge note of this loan of the tenth of April, 1894, is in the words and figures following:

Form No. 6.

LONDON, 10*th April*, 1894.

To Martin's Bank, Ltd., 68 Lombard street.

GENTLEMEN: In consideration of your advancing to us the sum of twenty-two thousand four hundred pounds for a period of three months from this date, at interest of six (6) per cent. per annum, we deposit with you the securities enumerated on the other side,
236 which we hereby guarantee to be of the present value there stated; and we undertake to maintain from time to time a margin in value of ten per cent. on the amount of your cash advance by placing additional security in your hands should this become necessary through depreciation of those which we now lodge or which may hereafter, either by way of substituted or additional security be lodged with you, in default whereof, and in default of our repaying to you the amount owing to you as before mentioned, or in default of our maintaining margin as above, you are hereby authorized, without any further security, to realize the securities you may hold for the time being, and the purchaser shall not be concerned to inquire whether there has been any such default or whether your right to realize the securities has arisen. We shall hold ourselves at liberty to withdraw any of the above securities in exchange for others of at least equal value, or on payment of an equivalent part of your advance.

It is hereby agreed that the securities here referred to, will be held by you generally against any advance which we may be under to you as well as against this particular loan.

(Signed) COFFIN & STANTON, LIMITED.
HERBERT B. MONTEFIORE, *Director.*
F. H. BURR, *Secretary.*

(Stamp 6d.)

237	Description of securities.		Value
$12,000	Gravesend local improvement loan, at.....	90	£2,060
46,000	Salt Lake & Ogden Gas & Electric Light Co., 6 per cent. 1st mg., at.....	90	8,280
57,000	New York City Suburban Water Co., 1st mge, at.....	50	5,700
46,000	Toledo & Ohio Cent'l Exten. R'l'y Co., 1st mge., 5 per cent.....	50	4,600
6,000	Topeka Water Co., 1st mge., 6 per cent.....	50	600
2,000	City Water Co. of Santa Cruz, 1st mge., 6 per cent.....	100	400
12,000	Santa Fé county, New Mexico, 5 per cent. funding bond.....	85	2,040
5,000	Littletown Water & Electric Light Co., 6 per cent.....	100	1,000
8,000	Consolidated Gas & Electric Light Co. of Worcester, 6 per cent.....	50	800
5,000	Chattanooga Water & Electric Co., 6 per cent., 1st mge.....	50	500
10,000	Debenture Guarantee & Ass'ce Co. of Great Britain & America, 6 per cent.....	100	2,000
4,350	New Municipal Trust Co., deferred stock....	40	1,740
			£29,720

238 The balance of the said security of the $25,000 bonds of the city of Santa Cruz, five per cent. namely, $20,000, was handed to Coffin & Stanton, Limited, on the fourteenth day of June, 1894. The 4,000 balance of the said loan of £5,000 loan of the twenty-eighth of May, 1894, was repaid by being debited to the current account of Coffin & Stanton, Limited, of London, but practically by the proceeds of a sight draft for $20,000 on New York, drawn by Coffin & Stanton, Limited, of London, on Coffin & Stanton of New York. This draft had attached thereto $12,000, city of Santa Cruz, six per cent. bonds, and $8,000 city of Santa Cruz five per cent. bonds. This draft was sent to New York to our agents, Messrs. Heidelbach, Ickelheimer & Co., presented by them, was dishonored and is still in our possession. It is in the words and figures following:

LONDON, 14*th June*, 1894.

Exchange for $20,000.

At sight pay this first of exchange (second unpaid) to the order of Martin's Bank, Ld., twenty thousand dollars ($20,000) with $12,000. City Water of Santa Cruz, six per cent., and $8,000 city of Santa Cruz, five per cent. bonds attached. Value received, which place to account.

(Signed) COFFIN & STANTON, LIMITED.
HERBERT B. MONTEFIORE,
CHAS. B. LUDWIG, *Directors.*

To Messrs. Coffin & Stanton, 72 Broadway, New York.

Endorsed by Martin's bank to Heidelbach, Ickelheimer, of New York, but returned dishonored.

239 The bonds attached to this draft are still held by us, and together with the $2,000, five per cent. city of Santa Cruz bonds, exchanged for the $2,000, six per cent. of the loan of tenth of April, 1894, have been sent to Messrs. Street, Wykes & Co., of New York, to enforce payment of coupons and bonds, if necessary.

The numbers of these Santa Cruz bonds, as aforesaid, are: $12,000, six per cent., Nos. 64, 70, 82, 84, 85, 94, 95, 97, 122, 123, 124; coupon November, 1894, attached.

$8,000, five per cent. bonds, Nos. 184, 185, 186, 201, 202, 203, 204, 205; coupon April, 1895, attached.

$2,000, five per cent. bonds, No. 187, 188, with coupon November, 1894, attached.

All the above bonds are $1,000 each.

We had no knowledge at the time we came into possession of these bonds relative to the title to the same of the persons from whom we received possession. We assumed, as a matter of course, that Coffin & Stanton, Limited, of London, were properly possessed of these bonds and had given value for them, and we still believe this to be the fact. We had no knowledge, nor have we any now, of any relations between Walter Stanton and the defendant, The City of Santa Cruz.

We made no investigation with reference to the indebtedness of the defendant existing at the time these bonds were taken. We were dealing with a corporation, namely, Coffin & Stanton, Limited, of London, which was highly esteemed by us.

240 Cross-examination:

The only other securities we have on account of Coffin & Stanton, Limited, are those given in the schedule on the back of the pledge form, of the tenth of April, 1894, hereinbefore set out. Our realization account shows charges against Coffin & Stanton, Limited, aggregating £34,036:7:3 and credits from payments, dividends and proceeds of sales of some of the securities aggregating £11,930:13:9. The realizations were at the market value of the securities sold. At present we hold these and other bonds as collateral to our advances not yet discharged. Coffin & Stanton, Ltd., went into liquidation on the twenty-sixth day of October, 1894.

On the tenth of April, 1894, we were asked to make a loan of £22,400, and agreed to do so after writing off then existing loans of £14,000. The £5,000 of the twenty-eighth of May, 1894, was to the best of my recollection made at the request of Mr. Ludwig, who stated that Coffin & Stanton, Limited, of London, had to pay the City Bank of London £5,000 for a draft with these bonds attached.

The purchase of the $20,000 draft of the fourteenth of June, 1894, was also arranged with Mr. Ludwig.

I conducted the negotiations on the part of the bank and Mr. Montefiore or Mr. Ludwig, or both, on the part of the borrower.

The bank received a letter from Coffin & Stanton, Limited, of London, dated twenty-eighth of May, 1894, relating to the £5,000 loan which is in the words and figures following:

241 43 THREADNEEDLE STREET,
LONDON, E. C., *28th May*, 1894.

Martin's Bank, Limited, 68 Lombard street, E. C.

DEAR SIRS: We are arranging to exchange the city of Santa Cruz Water Co. bonds, held by our clients upon this side, for the five per cent. municipal bonds of the city of Santa Cruz; but for a day or two we are unable to obtain these water company bonds, and, therefore, desire you to carry for us the £5,000 draft which we have due this day, holding as security therefor the $25,000 city of Santa Cruz, five per cent., municipal bonds attached to this draft, until such time as we can obtain the water company bonds, which we propose attaching to a draft upon Messrs. Coffin & Stanton, of New York.

We might add that we have to effect the exchange of $89,000 of these Santa Cruz bonds, so that we may need your assistance in one or two instances to enable us to carry these exchanges through.

Yours faithfully,

COFFIN & STANTON, LIMITED.
(Signed) HERBERT B. MONTEFIORE, *Director.*
F. H. BURR, *Secretary.*

242 Also, a letter from Coffin & Stanton, Limited, dated the eighth of June, 1889, which is in the words and figures following:

Coffin & Stanton, Limited, 43 Threadneedle street.

LONDON, E. C., *8th June*, '94.

Luke Hansard, Esq.

DEAR SIR: We beg to hand you herewith draft upon Coffin & Stanton, New York, for $5,000, which please place to the credit of our account. We also hand you a cheque for £1,000, which please place to the credit of our loan account.

The $5,000, Santa Cruz Water Company, six per cent. bonds, which are to be attached to the above-mentioned $5,000 draft, you will find are held by you as security for our loans ($3,000 in the £5,000 loan recently made with you and $2,000 in our old loan.)

Yours faithfully,

COFFIN & STANTON, LIMITED.
(Signed) F. H. BURR, *Secretary.*

Please be sure and send the six per cent. Santa Cruz Water Company bonds, not the five per cent. Santa Cruz municipal bonds.

That is all the correspondence we have relating to these loans. The loans for which the Santa Cruz bonds were taken as collateral represent money at the time advanced. It was to enable Coffin & Stanton, Limited, to pay for the said $25,000, referred to in the loan of the twenty-eighth of May, 1894.

243 The bank never had any business relations with Coffin & Stanton, of New York, except to sell through them, as brokers, some Northern Pacific bonds. All our transactions were with Coffin & Stanton, Limited, of London, on their own account, and by their own order.

At the time of taking the Santa Cruz bonds as collateral the bank held none of Coffin & Stanton's obligations, which were due and unpaid. No statements were made to the bank by Coffin & Stanton. Our business dealings being all with Coffin & Stanton, Limited, of London. We received no letters, printed statements or circulars, or opinions of attorneys concerning the said bonds, or the financial condition of the city of Santa Cruz. We made no investigation concerning the said bonds of the said city of Santa Cruz. We had no actual knowledge of the value of the five per cent. bonds, but relied upon the integrity of Coffin & Stanton, Limited, of London, who, themselves, on the back of the pledge form, in their handwriting, valued these bonds at one hundred or par.

We had no knowledge regarding the city of Santa Cruz or its financial condition, beyond that the city was generally considered in London as good for its indebtedness. We have never received or heard of any letter or circular from Coffin & Stanton, in which they speak of themselves as the financial agents of the city of Santa Cruz, nor were we, that is Martin's bank, aware that Coffin & Stanton of New York were the fiscal agents of the city of Santa Cruz. We hold no other bonds of the city of Santa Cruz. We had never held any bonds of the city of Santa Cruz before that time. On making the loans referred to hereinbefore, the respective
244 amounts were credited to the current account of Coffin & Stanton, Limited, of London, on the same dates as those of the loan forms and draft.

Coffin & Stanton, Limited, is in liquidation and little or no dividend is expected from them. We have a judgment against Coffin & Stanton of New York for an unpaid draft $12,500 due tenth of September, 1894, which has so far produced nothing, and other securities besides those of the city of Santa Cruz are opposed, whilst others are in process of reorganization.

In addition to our claims under the loan of tenth of April, 1894, and the $20,000 draft of the fourteenth of June, 1894, we claim to have a lien upon the securities *en bloc* held by us for the said unpaid draft of $12,500, of the sterling equivalent of £2,565 : 2 : 1 in addition to which we claim interest to date.

That JOHN EDWARD BOOTH, a witness on behalf of plaintiff, testifies as follows:

I am secretary of the Northern Counties Investment Trust (Limited). In the month of September, 1893, the trust company received from the American Debenture Co., through Coffin & Stanton, Limited, three bonds of $1,000 each of the City Water Company of Santa Cruz, California, as part collateral for a loan of $1,000. In the month of May, 1894, the said bonds were exchanged for three bonds of the city of Santa Cruz, purporting to be executed by its officers

on the sixteenth day of April, 1894, being numbers 181, 182, 183. No part of the loan for which they were taken as collateral has been paid. The trust company is still in possession of the bonds.

245 The first maturing coupons on each falling due, on April 16, 1895, were lodged with Mr. A. H. Waite on June 13, 1895. The trust company, at the time it came into possession of these bonds had no knowledge or notice relative to the title to the same of the person or persons from whom it received possession, nor as to the relations between Walter Stanton and the defendant. It made no investigation with reference to the indebtedness of the defendant existing at the time these bonds were taken.

Cross-examination:

The bonds of the following companies were originally lodged with us as security for the loan, the Santa Cruz being afterwards received as substitutes:

Kansas Water & Light Co.	$25,000
New York Suburban Water Co.	25,000
United Terminal Railway Co.	18,000
Topeka Water Co.	5,000
Indiana Water Co.	10,000
Consolidated Gas & Electric Light Co. of Westchester county	9,000
City Water & Light Co. of Abilene	1,000
Chillicothe Water & Light Co.	12,000

The transaction connected with the taking of the collateral mentioned was a loan of $100,000 to the American Debenture Co., then called the Debenture Guarantee and Assurance Company of Great Britain and America. The loan was secured by the debentures of that company, supported by the collateral mentioned in the last answer. Several of the collateral bonds have been exchanged on the substitution of others in the customary manner.

246 On the suspension of Coffin & Stanton of New York, agents for the American Debenture Company, the Northern Counties Investment Trust Company became the owner of the collateral by virtue of the terms of the trust agreement entered into when the loan was effected. No value was placed upon the collateral.

The negotiations were conducted with Messrs. Coffin & Stanton Limited, and the collateral was received from them as an ordinary loan transaction. The loan for which the Santa Cruz bonds were taken as collateral represented money advanced at the time and nothing else. No previous obligation was in existence.

The trust company had previous business relations with Coffin & Stanton from the time of the granting of the loan in the month of January, 1891, down to the time when the city of Santa Cruz bonds were received in substitution for those of the City Water Co. Such business relations related to the substitution or the exchange of bonds in the usual way. There may have been other business relations with Coffin & Stanton during that period, but they do not affect the

Santa Cruz bonds or the said loan. At the time of the taking of the Santa Cruz bonds as collateral, the trust company did not hold any of Coffin & Stanton's obligations which were due and unpaid. Coffin & Stanton gave no information and made no statement, nor did any other person or persons, to the trust company concerning the so-called refunding bonds of the city of Santa Cruz, beyond that contained in the correspondence; nor any statement concerning the financial condition of the city of Santa Cruz other than shown in the correspondence attached hereto.

247 No investigations were made by the trust company concerning the said bonds of the city of Santa Cruz, other than that which appears in the correspondence. Nor had we any knowledge concerning the value of the bonds other than such as appears in such correspondence. At the time of the taking of the refunding bonds we did not know that Coffin & Stanton were fiscal agents for the city of Santa Cruz. The loan was paid to the borrowers as follows:

£	s.	d.			
947	3	9	March	26,	1891
956	16	9	June	4,	"
478	19	3	"	11,	"
191	14	8	"	17,	"
472	14	9	Aug.	29,	"
1,688	15	3	Sept.	25,	"
93	16	5	Oct.	5,	"
661	8	4	"	14,	"
188	0	2	Nov.	7,	"
752	0	9	"	17,	"
564	0	7	"	21,	"
188	0	2	Dec.	8,	"
1,786	1	10	"	17,	"
1,128	1	2	"	23,	"
188	0	2	Jan.	4,	1892
471	0	0	"	19,	"
1,884	0	0	"	25,	"
188	0	0	Feb'y	3,	1893
5,654	8	0	May	23,	"
£18,483	12	0			

248 The balance was represented by commissions, insurances, premiums, trustees' fees, etc., making up a total of twenty thousand pounds (£20,000), say one hundred thousand dollars ($100,000).

The correspondence referred to in my foregoing testimony is as follows:

Coffin & Stanton, Limited, 47 Old Broad street, London, E. C.

SEPTEMBER 18, 1890.

The Northern Counties Investment Trust, Limited, 8 Piccadilly, Bradford.

DEAR SIRS: Referring to our conversation with your Mr. John Henry Wade in reinsurance of debentures of the Debenture Guarantee & Assurance Company of Great Britain and America, we desire to make the following proposition:

1st. That the debenture company issue a special series of 4½ per cent. sterling debentures for £20,000, hypothecating as security therefor an equivalent amount and an additional margin of 5 per cent. of the first-mortgage gold bonds of various enterprises situated in the United States (exchange to be figured at 4.86½ par value gold).

The securities to be hypothecated to be as follows:

$11,000 Consolidated Gas & Electric Light Co. of Westchester Co., N. Y., 1st 6 per cents.
11,000 Indiana Water & Light Co. 1st 6 per cents.
11,000 Fort Madison, Iowa, Water Co. 1st 6 per cents.
10,000 Kansas Water & Light Co. 1st 6 per cents.
10,000 Chillicothe, Missouri, Water & Light Co. 1st 6 per cents.

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10,000 Saratoga Gas & Electric Light Co. 1st 6 per cents.
10,000 Topeka, Kansas, Water Co. 1st 6 per cents.
10,000 Crawfordville, Indiana, Water & Light Co. 1st 6 per cents.
10,000 Nebraska City Water & Light Co. 1st 6 per cents.
10,000 United Terminal Railway Co. 1st 6 per cents.

$103,000 equivalent to £21,171, 5.85 per cent. margin over £20,000.

2nd. These bonds to be hypothecated with the New Municipal Trust Company of London, or with some other trustee to be mutually agreed upon, to secure the aforementioned issue of 4½ debentures.

3rd. The debentures to be in denominations of £500, £200, and £100, or such other denominations as you deem best. The said debentures to mature seven years from date of issue, but to be redeemable at par at the option of the company on any coupon day after five years from the date of issue by giving your company, or the holder of such debentures, thirty days' notice thereof in writing.

Coupons to be semi-annual.

4th. The company is to pay you for the insurance of these debentures a premium of 2 per cent. on the par value of debentures as they are issued, and an additional premium of one-half of one per cent. on the first day of —— in each year during the currency of said debentures.

5th. For and in consideration of the payment of the above sums the Northern Counties Investment Trust, Limited, is to guarantee

to the registered holder the debentures and interest in the following manner, viz:

250 A. The trust will pay to the assured any interest on the said debenture which the company shall not pay for sixty days after the date when the same shall become payable thereunder.

B. The trust will pay to the assured any principal sum secured by said debenture which shall have become payable by the company, and which the company shall have made default in paying.

C. Any principal money payable under this policy will be paid within three calendar months after notice in writing from the assured to the trust, requiring the trust to pay the same, and any interest payable under this policy will be paid within one calendar month after notice in writing from the assured to the trust to pay the same.

6th. Your company to undertake the sale of these guaranteed debentures with the express understanding that the debenture company is not to advertise them or to offer them in any way. Your company to receive a commission of 1 per cent. on the par value of all debentures sold. We believe the foregoing practically covers all the principal points discussed by your Mr. Wade and our Mr. Street.

We inclose herewith brief description of the various bonds which it is suggested to hypothecate, and a map showing the situation of the various companies.

In order to facilitate your investigation of these securities we have selected only those issued, portions of which have already been purchased by several trust companies in London. The New Municipal Trust Company have themselves purchased blocks of all of these securities, with one exception, and we refer you to them by permission.

251 Our experience in this class of investments has been uniformly satisfactory. During the past few years we have negotiated between $50,000,000 and $60,000,000, with the result that up to the present time not a single coupon is in default.

All of the bonds which we propose to hypothecate have passed the careful examination to which we invariably subject securities before purchasing. We are, therefore, of the opinion that they cannot but prove desirable security upon which to base the issue of debentures.

Trusting that our proposition will receive your favorable consideration, we are, dear sirs,

Yours faithfully,

COFFIN & STANTON, LTD.,

(Signed) By C. F. STREET,

Managing Director.

Inclosures.

American investments.

Coffin & Stanton, Limited, 47 Old Broad street, London, E. C.

OCTOBER 13, 1890.

DEAR SIRS: We are preparing a proof of the debentures to be in the hands of the printers. Will you kindly inform us what denomination you consider it best for us to have printed? If our memory serves us correctly, you suggested that some debentures should be in the amounts of £500, some £200, and some £100. Will you kindly state what proportion of each will be most likely to meet the requirements of clients.

252 You informed us that your Mr. Booth was in America. When you are next writing to him we would deem it a favor if you will state that the office of Coffin & Stanton is situated at 72 Broadway, New York, and Mr. Street desires to say that his partners there will be exceedingly glad to have the pleasure of an interview with him if he can find an opportunity to call. As we hope that this will not be the last transaction which we shall have with your company, we also think that it will be advisable that the New York firm, as well as ourselves, should have personal associations with some of your officers. We are, dear sirs,

Yours faithfully,

COFFIN & STANTON, LIMITED,

(Signed) By C. F. STREET, *Managing Director.*

Messrs. Wade, Bilbrough, Booth, 8 Piccadilly, Bradford.

Coffin & Stanton, Limited, 47 Old Broad street, London, E. C.

APRIL 4, 1891.

DEAR SIRS: We desire to acknowledge receipt of your letter of the 31st ult.

We will have to leave the further discussion of stamp duties until we hear from Somerset house.

As soon as we hear from you we will endeavor to arrange for an interview, as your Mr. Stanton from New York has just arrived in London. He brings with him business undertakings which we believe may prove of interest to you. At this interview we will finally arrange all details in regard to stamp duties, and will

253 submit first-mortgage gold bonds in place of Fort Madison Water Co. bonds which you now hold, and which you desire us to exchange. We beg to remain,

Faithfully yours,

COFFIN & STANTON, LIMITED,

(Signed) By C. F. STREET, *Managing Director.*

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford, Yorks.

Coffin & Stanton, Limited, 47 Old Broad street, London, E. C.

APRIL 20, 1891.

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford, Yorks.

DEAR SIRS: We have today returned to you, under cover of registered mail, 10 £100 debentures of Debenture Guarantee & Assurance Co. of Great Britain and America, which we trust will reach you safely.

You will note that we have had the debentures stamped with a 10 — embossed stamp as requested.

We are, dear sirs,

Yours faithfully,

COFFIN & STANTON, LIMITED,

(Signed) By WALTER STANTON.

254 Coffin & Stanton, Limited, 43 Threadneedle street.

LONDON, E. C., *May* 30, 1891.

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford, Yorks.

DEAR SIRS: We are in receipt of your favor of the twenty-ninth inst. in regard to the debentures of the Debenture Guarantee & Assurance Co. of Great Britain and America. We will forward you an additional £1,000 debentures on Monday the first prox., and will at the same time forward the following bonds as collateral:

$1,000 Kansas Water & Light Co., 1st 6 per cents.
1,000 United Terminal R'y Co., 1st 6 per cents.
1,000 city of Santa Cruz, California, Water Co., 1st 6 per cents.
1,000 Topeka Water Co., 1st 6 per cents.

You will note that the 10 per cent. margin is fully covered, inasmuch as we forwarded you $500 bonds over the 10 per cent. margin on the last transaction.

We will also forward on Monday, statement of account showing the amount due, etc.

We are, dear sirs,

Yours faithfully,

COFFIN & STANTON, LIMITED,

(Signed) By WALTER STANTON.

P. S.—In what denominations do you require the debentures? We will not forward the debentures until advised regarding this point.

255 BRADFORD, 1*st June*, 1891.

Debenture Guarantee & Assurance Co.

DEAR SIRS: In reply to your letter of May 30th, we think two debentures of £500 each would be most convenient, but before we can accept a bond of the City of Santa Cruz Water Co., as part of the collateral security, we must ask you to be good enough to for-

ward us particulars relating to that company for consideration. We think it is not amongst the lists you have previously furnished. If you will refer to your letter of March 18th, you will find a list of the bonds which you said would be hypothecated when the second £1,000 of debentures was dealt with.

You will observe that this list amounts to a total of $6,000, in place of $5,000 only which you now propose to deposit. Will you please explain why a variation is now sought both in the description and amount of the bonds.

Yours faithfully,

(Signed) WADE, BILBROUGH, BOOTH & CO.

Messrs. Coffin & Stanton, Limited, 43 Threadneedle street, London, E. C.

Coffin & Stanton, Limited, 43 Threadneedle street.

LONDON, E. C., *June* 2, 1891.

In re Debenture Guarantee & Assurance Co.

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford.

DEAR SIRS: In reply to your letter of the first inst., we note that two debentures of £500 will be most convenient, and that
256 you would wish to go over the papers regarding the Santa Cruz Water Co. before accepting the bonds of that company as collateral security, but referring to our letter of March 18th, of which the writer was not advised, we find the following bonds enumerated:

$2,000 Saratoga Gas & Electric Light Co., 1st 6 per cents.
1,000 Kansas Water & Light Co., 1st 6 per cents.
1,000 Fort Madison Water Co., 1st 6 per cents.
1,000 Topeka Water Co., 1st 6 per cents.
1,000 United Terminal R'y Co., 1st 6 per cents.

As you do not approve of the Fort Madison Water Co. bond, it would be necessary for us to substitute a bond in its place, but, at the time of the first deposit of collateral security, we did not have a $500 bond, and therefore sent you $6,000 as collateral security when it was only incumbent on us to send $5,000, the arrangement being that you should have 10 per cent. margin. It is, therefore, not necessary for us to deposit as collateral security more than $5,000 bonds in this transaction, the overplus of collateral on the first transaction being the exact amount required to furnish the 10 per cent. margin on the second transaction; we have therefore sent you under separate cover the following:

$2,000 Saratoga Gas & Electric Light Co., 1st 6 per cents.
1,000 Kansas Water & Light Co., 1st 6 per cents.
1,000 United Terminal R'y Co., 1st 6 per cents.

Also the two £500 debentures and the statement of account showing amount due.

257 Trusting that this explanation will be satisfactory, we beg to remain,

Yours faithfully,

COFFIN & STANTON, LIMITED,
By WALTER STANTON.

Coffin & Stanton, Limited, 43 Threadneedle street.

LONDON, E. C., *July* 20, 189-.

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford.

DEAR SIRS: We are today in receipt of a letter from the Debenture Guarantee & Assurance Co., in which they express regret that more of the 4½ per cent. debentures have not been placed as we had virtually assured them that the entire amount of series Z would be placed within a year.

In order to make this transaction more satisfactory to them, we make you the following proposition:

If you will take £4,000 of these debentures, we will purchase from you £2,000 of same, upon the understanding that when we dispose of the debentures, you will transfer the insurance policy to the purchaser.

You will note from this proposition that you make the full commission on the £4,000 at once.

Yours faithfully,

COFFIN & STANTON, LIMITED,
(Signed) By WALTER STANTON.

Coffin & Stanton, bankers, New York, London.

258 We offer subject to sale, or advance in price, $360,000 city of Santa Cruz, California, 5 per cent. refunding gold bonds. Dated April 16, 1894. Due as follows: $9,000 April 15, 1895, and $9,000 annually thereafter. Average time to run 20½ years. No option of redemption before maturity. Denomination, $1,000. Coupons annually April 15th. Payable at city treasurer's office, Santa Cruz.

Real valuation	$9,768,600
Assessed valuation	3,907,400
Total debt (this issue)	360,000
Issued to refund bonds for water supply	320,000
Net debt	40,000

Including the suburbs a total population of 11,000 is tributary to the water system. The corporate limits of the city have not been enlarged for many years.

The water plant is a gravity system costing about $370,000.

A legal investment for savings banks in the States of Rhode Island, Pennsylvania, Maryland, and New Hampshire. Price, $101 and interest. Nets nearly 5 per cent.

Under the law governing savings banks investments in the State of Massachusetts, the debt issues for water supply is deducted from

the gross debt on the theory that such property is self-sustaining, and no burden upon the city. In estimating the net indebtedness this rule has been followed:

43094.

First-mortgage 6 per cent. gold bonds of the City Water Company of Santa Cruz, California. Dated 1890. Due 1910. Denomination, $1,000. Coupons May and November ——.

The plant owned by this company was purchased by the
259 city, subject to this bond issue of $130,000. The city paying $270,000 in money over and above the bonds so assumed, hence it will be seen that the outstanding water company bonds are secure beyond question.

Legality of issue has been passed upon by our attorneys in both California and New York.

Santa Cruz, situated on the coast about fifty miles south of San Francisco, is one of the most substantially built and prosperous cities in California. Many of the streets are paved with asphalt. The public and other improvements are of a superior character.

The city has extensive manufacturing and commercial interests, and the surrounding country is of unsurpassed fertility, largely under fruit culture, the actual yield occasionally running as high as $750 to $1,000 per acre.

The prevailing nationalities are American and English, the latter attracted to the city by its unrivaled climate and social advantages.

Water is a necessity in that climate, and is largely used for irrigation, as well as for domestic purposes and fire protection. Under irrigation a failure of crop is unknown.

BALL, WOOD & OAKLEY,
Attorneys-at-law, Chicago.

MARCH 22, 1893.

City Water Company of Santa Cruz.

We hereby certify that we have examined the following documents relating to the issue of four hundred thousand six per cent. gold bonds, of the City Water Company of Santa Cruz, California.

1. Certified copy of the articles of incorporation of said company, dated September 26, 1889, and accompanying certificates of filing.

260 2. Certified copy of laws adopted October 28, 1889.

3. Certified copy of proceedings to create bonded indebtedness. Certified copies of three several ordinances of the city of Santa Cruz, California.

No. 188 October 28, 1889, authorizing the firm of Coffin & Stanton to erect and operate water works.

No. 192 November 20, 1889, authorizing city to convey to City Water Company of Santa Cruz its water and riparian privileges in Laguna creek.

No. 219 June 2, 1890, authorizing the substitution of Holland Trust Company as trustee.

5. Copy of deed of city of Santa Cruz, California, to City Water Company of Santa Cruz, of its water and riparian privileges in Laguna creek, and of its rights of way, etc.

6. Certified copy of assignment of franchise. No. 188, *supra*, by Coffin & Stanton, to City Water Company of Santa Cruz.

7. Original records of City Water Company of Santa Cruz, showing resolutions of stockholders and directors, authorizing execution of deed of trust and bonds, and of the delivery of them.

8. Certified copy of deed of trust, dated May 1, 1890, City Water Company of Santa Cruz to Holland Trust Company of New York City.

9. Certificate of Holland Trust Company of bonds now in their possession.

10. Report on title of rights of way, riparian rights and water privileges by Mr. E. H. Rixford, attorney-at-law, San Francisco, California, dated April 1, 1890.

261 And from such examination we are of the opinion that the City Water Company of Santa Cruz was on May 1, 1890, and ever since has been, a lawfully created corporation under the laws of the State of California; that it has power to borrow money and issue its bonds to evidence the same, and to secure the payment of such bonds by mortgage or deed of trust upon its property; that by original franchise and by the subsequent assignment thereof the said City Water Company of Santa Cruz, was, May 1, 1890, invested with power and authority to erect and maintain its water plant in the city, and to furnish water to the city and the inhabitants thereof, as in said ordinance provided; that the resolutions of the stock holders and directors authorize the execution of bonds to the amount of four hundred thousand dollars, and of the deed of trust to secure the same; that the bond and deed of trust are in due form of law, to create a lien upon the property of the company; that the deed of trust has been filed for record and recorded.

From the opinion of title of Mr. T. H. Rixford, and from unauthenticated copies of deeds we are of the opinion that riparian and water rights from the source of supply, Laguna creek, were on said first day of May, 1890, vested in said company and are covered by said deed of trust.

We further find that of said four hundred bonds two hundred and seventy are held by the Holland Trust Company to secure a like number and amount of the bonds of said city of Santa Cruz, and that twenty-seven other of said bonds have been canceled, and that the residue of said four hundred bonds—that is to say, one hundred and three each of the par value of one thousand

262 dollars—are outstanding and are valid obligations and secured by the deed of trust hereinbefore recited.

Very respectfully, CHAS. B. WOOD.

Coffin & Stanton, Limited, 43 Threadneedle Street.

LONDON, E. C., 11*th Sept.*, 1893.

American Debenture Company.

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford.

DEAR SIRS: We have just discovered that the Consolidated Gas & Electric Light Co. securities held by our New York people are the extension mortgage bonds—not the firsts as we had supposed. We therefore beg to again ask if you kindly allow us to withdraw $2,000 Consolidated Gas & Electric Light Co., and $1,000 Saratoga Gas & Electric Light Co. bonds, we substituting in place thereof $3,000 first-mortgage 6 per cent. gold bonds of the City Water Co. of Santa Cruz, California. These bonds are an exceptionally good water bond, and the last sale in England was at 101 and accrued interest.

We inclose you herewith circular describing the bonds; also a report of Mr. C. Wood, who was appointed by the Mortgage Insurance Co. of London to report upon this water Co., and which report was considered sufficiently satisfactory for them to accept the bonds.

The City Water Co. of Santa Cruz was organized for the purpose of constructing the water works referred to. It issued its
263 bonds amounting to $400,000. The works were afterward purchased by the city; the city paying for same $270,000, cancelling a like amount of the first-mortgage 6 per cents, and assuming the remaining $130,000 first-mortgage 6 per cents, as their own liability, of which they have since retired $27,000, thus leaving but $103,000 first-mortgage 6 per cent. bonds outstanding upon the water works for which the city paid $400,000.

We have no details of the earnings and expenditures of this company, as the bonds are practically a municipal bond, the interest being paid by the city.

We have but five of these bonds. Our New York house holds none.

The population supplied by the water works is about 8,000.

We would like you to return to us the report by Mr. Wood, as it is an original document. But we will be pleased to make a copy for you if you desire it.

Trusting you will allow us to withdraw the bonds referred to, we beg to remain,

Yours faithfully, COFFIN & STANTON, LIMITED.
F. H. BURR, *Secretary.*

SEPT. 12TH, 1893.

American Debenture Company.

DEAR SIRS: We are in receipt of your letter of 11th instant, with circular and report of Mr. Wood relating to the bonds of the City Water Company of Santa Cruz, offered in exchange for the
264 bonds of the Saratoga Gas & Electric Light Co., and the Consolidated Gas & Electric Light Co., which you wish to with-

draw. As you are already aware we make a practice of submitting these applications to our board, and we shall not be able to give you a reply before Monday next.

In the meantime please advise us of the date and amount of the sale in England at 101 and accrued interest mentioned in your letter.

Yours faithfully,

WADE, BILBROUGH, BOOTH & CO.

Messrs. Coffin & Stanton, Limited, 43 Threadneedle street, London, E. C.

Coffin & Stanton, Limited, *32* Threadneedle street.

LONDON, E. C., *13th Sept.*, 1893.

American Debenture Company.

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford.

DEAR SIRS: We thank you for your letter of the 12th inst., relating to the City Water Co. of Santa Cruz bonds. The last few sales of these bonds in England are as follows:

Jan. 4, 1893. $5,000 at 101 and accrued interest.
Feb. 2, 1893. $4,000 at 101 " " "
May 1, 1893. $3,000 at 101 " " "

Yours faithfully, COFFIN & STANTON, LIMITED.
F. H. BURR, *Secretary.*

265 SEPT. 18TH.

DEAR SIRS: Our board has sanctioned the exchange of bonds desired by your letter of the 11th inst., and if you will send us the three Santa Cruz bonds we shall be prepared to forward two Consolidated Gas & Electric Light Co.'s bonds and one Saratoga bond in exchange. Please also send a cheque for the substitution fee.

Yours faithfully,

WADE, BILBROUGH, BOOTH & CO.

Messrs. Coffin & Stanton, Limited, 43 Threadneedle street, London, E. C.

Coffin & Stanton, Limited, 43 Threadneedle Street.

LONDON, E. C., *Sept.* 19, 1893.

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford.

American Debenture Company.

DEAR SIRS: We beg to acknowledge the receipt of your favor of the 18th inst., and desire to thank your board for their courtesy in permitting us to withdraw the $1,000 Saratoga Gas & Electric Light Co. and $2,000 Consolidated Gas & Electric Light Co. bonds. We hand you herewith three $1,000 bonds of the City Water Co. of Santa Cruz, Cal., together with our cheque for £1.10.0 in payment of substitution fee.

266 Upon receipt of these bonds, will you kindly forward us the Saratoga and Consolidated G. & E. L. bonds.

Yours faithfully,

COFFIN & STANTON, LIMITED.
F. H. BURR, *Secretary.*

Registered. SEPT. 20TH.

American Debenture Company.

DEAR SIRS: We are in receipt of your letter of 19th inst., inclosing three $1,000 bonds of the City Water Co. of Santa Cruz, Cal., Nos. 56, 57 and 58, in exchange for which we inclose two $1,000 bonds of the Consolidated Gas & Electric Co. Nos. 119 and 120, and $1,000 bond of the Saratoga Gas & Electric Co., No. 76.

We have also received your cheque for 1.10.0 in payment of substitution fee.

Please acknowledge the receipt of the bonds sent herewith.

Yours faithfully,

WADE, BILBROUGH, BOOTH & CO.

Messrs. Coggin & Stanton, Limited, 43 Threadneedle street, London, E. C.

Coffin & Stanton, Limited, 43 Threadneedle Street, London, E. C.

Messrs. Wade, Bilbrough, Booth & Co., Piccadilly, Bradford.

Debenture Guarantee and Ass'ce Company.

DEAR SIRS: You hold $3,000 City of Santa Cruz Water Co. 6 per cent. bonds as collateral security for the above Co.'s issue of
267 debentures. We would like to withdraw these $3,000 Santa Cruz bonds, giving you in place of same a like amount of the Salt Lake & Ogden Gas & Electric Light Co. first-mortgage 6 per cent. bonds, circular regarding which we inclose herewith; also résumé of the auditor's figures for this company, dated January 1, '94. Can you oblige us in this matter?

We shall be pleased to let you have a full copy of the auditor's balance-sheet of the Salt Lake Co., dated January 1, '94, if you so desire.

Yours faithfully,
(Signed)

F. H. BURR.
M. W.

MAY 11, '94.

Debenture Guarantee & Assurance Company.

DEAR SIRS: We are in receipt of your letter of 10th instant requesting permission to substitute $3,000 Salt Lake & Ogden Gas & Electric Light Co. bonds for the like amount of Santa Cruz Water Company bonds. Our board will not meet again until the 21st

instant, but on that day the matter will be brought before them and their decision communicated to you.

Yours faithfully,

(Signed) WADE, BILBROUGH, BOOTH & CO.
J. E. B.

Messrs. Coffin & Stanton, Limited, 43 Threadneedle street, London, E. C.

MAY 18, '94.

Debenture Guarantee & Assurance Company.

DEAR SIRS: Referring to your letter of the 10th instant,
268 we shall be glad if you will send us by return of post a copy of the last balance-sheet of the "Santa Cruz Water Company" in readiness for our board meeting on Monday; also a full copy of the auditor's balance-sheet (of 1st January, 1894) of Salt Lake and Ogden Company.

Yours faithfully,

(Signed) WADE, BILBROUGH, BOOTH & CO.

43 Threadneedle street, London, E. C., Messrs. Coffin & Stanton, Limited.

Coffin & Stanton, Limited, 43 Threadneedle street.

LONDON, E. C., *19th May*, 1894.

Messrs. Wade, Bilbrough, Booth & Co., Cavendish house, Piccadilly, Bradford.

DEAR SIRS: We beg to acknowledge the receipt of your favor of 18th inst., and inclose you herewith a copy of the audited balance-sheet of the Salt Lake & Ogden Gas & Electric Co., as requested. We are unable to forward you a balance-sheet of the Santa Cruz Co. as the works are operated by the city, and, therefore, no statements whatever are issued.

Yours faithfully,

COFFIN & STANTON, LIMITED.

(Signed) F. H. BURR, *Secretary*.
M. W.

Inclosure.

MAY 22, 1894.

Debenture Guarantee & Assurance Company.

DEAR SIRS: Our board have had your letter of 10th instant, requesting permission to substitute $3,000 Salt Lake & Ogden
269 Gas & Electric Light Co.'s bonds for a like amount of Santa Cruz Water Co.'s bonds, under consideration, and are not disposed to comply unless you can see your way to increase the margin of security. You will probably be aware that we have had

the Salt Lake & Ogden bonds offered on previous occasions, but have preferred to keep out of them.

Yours faithfully,

(Signed) WADE, BILBROUGH, BOOTH & CO.

Messrs. Coffin & Stanton, Limited, 43 Threadneedle street, London, E. C.

Coffin & Stanton, Limited, 43 Threadneedle Street.

LONDON, E. C., 26*th May*, 1894.

Messrs. Wade, Bilbrough, Booth & Co., Piccadilly, Bradford.

Debenture Guarantee & Ass'ce Co.

DEAR SIRS: We beg to acknowledge receipt of your favor of the 22d inst., and note that you are not disposed to accept the Salt Lake bonds in exchange for the Santa Cruz water 6 per cents, unless we can see our way to increase the margin. We regret we are unable to do this, as we have no authority.

Will you permit us to substitute a like amount of the city of Santa Cruz, California, 5 per cent. refunding gold bonds in place of the city of Santa Cruz water 6 per cents? We inclose herewith circular fully describing the municipal bonds, and we can strongly recommend them as a good security.

270 Your early attention to this matter will oblige,

Yours faithfully,

COFFIN & STANTON, LIMITED.

(Signed) F. H. BURR, *Secretary*.

BRADFORD, 28*th May*, 1894.

Debenture Guarantee & Assurance Co.

DEAR SIR-: Your letter of the 26th instant proposing to substitute city of Santa Cruz 5 per cent. bonds for city of Santa Cruz water bonds has been considered at our board meeting this afternoon, when a disposition was evinced to oblige you. Before giving a definite answer, however, we should like some further explanation with respect to the statement in the particulars you have sent intimating that the 5 per cent. bonds are issued to refund bonds for water supply. Does this mean that the 5 per cent. bonds are in substitution for the 6's we already hold, or does it indicate that there are two sources of supply—one owned by the city and the other by the water company?

Yours faithfully,

(Signed) WADE, BILBROUGH, BOOTH & CO.

Messrs. Coffin & Stanton, Limited, 45 Threadneedle street, E. C.

Coffin & Stanton, Limited, 43 Threadneedle street.

LONDON, E. C., 28*th May*, 1894.

Debenture Guarantee & Assurance Co.

Messrs. Wade, Bilbrough, Booth & Co., 8 Piccadilly, Bradford.

DEAR SIRS: We beg to acknowledge the receipt of your
271 favor of the 28th inst., and in reply thereto would state that at the time the water works were built in the city of Santa Cruz, the law authorized the city to issue only about $300,000 bonds for this purpose. As the works cost about $400,000 to build, it was necessary to form a company which should issue its bonds for this $100,000, retaining a lien upon the city's plant for their security. It is these bonds which you now hold. Since the time of the building of the works, the State laws of California have been so changed that the municipality is now able to refund the former municipal bonds (which were payable one-twentieth each year for twenty years) into a new bond payable one-fortieth each year for forty years. And the law has also been so changed that the city is now legally in a position to issue a sufficient number of bonds to provide for the cancellation of the old water company bonds, such as you now hold. There is but one source of supply, and the issue of municipal bonds which we now propose to give you in place of the water company bonds will enable the retirement of the water company bonds, thus leaving the municipal bonds the only lien upon the property.

We believe the securities offered to be in every respect as desirable as those now held by you, and trust you will see your way clear to give us a favorable reply to our request.

Yours faithfully,

COFFIN & STANTON, LIMITED,

(Signed) By CHAS. B. LUDWIN, *Director*.

M. W.

272 MAY 30, 1894.

Debenture Guarantee & Assurance Company.

DEAR SIRS: We are in receipt of your letter of 29th instant, and from the information which it affords we are now disposed to accede to your request to substitute city of Santa Cruz 5 per cent. municipal bonds for City of Santa Cruz Water Company 6 per cent. bonds. We presume you will send us the former bonds, together with a check for the substitution fee, upon receipt of which we shall have pleasure in returning the water bonds.

Yours faithfully,

(Signed) WADE, BILBROUGH, BOOTH & CO.

Messrs. Coffin & Stanton, Limited, 43 Threadneedle street, London, E. C.

Coffin & Stanton, Limited, 43 Threadneedle street.

LONDON, E. C., 31*st May*, 1894.

Debenture Guarantee & Ass'ce Co.

Messrs. Wade, Bilbrough, Booth & Co., Piccadilly, Bradford.

DEAR SIRS: We beg to acknowledge receipt of your favor of the 30th inst., for which please accept our thanks. We have today sent you under separate cover $3,000 of the 5 per cent. municipal bonds of the city of Santa Cruz in exchange for which please forward us a like amount of the Santa Cruz Water Co. bonds.

273 We inclose herewith our cheque for substitution fee, as requested.

Yours faithfully,

COFFIN & STANTON, LIMITED,

(Signed) By CHAS. B. LUDWIG, *Director*.

Inclosure.

J 3–176.
M. W.

Registered.

JUNE 1, 1894.

Debenture Guarantee & Assurance Company.

DEAR SIRS: We are in receipt of your letter of 31st ulto., inclosing $3,000 city of Santa Cruz 5 per cent. municipal bonds, in exchange for which we hand you herewith a like amount of City Water Company of Santa Cruz 6 per cent. bonds (Nos. 56, 57, and 58). Please acknowledge the receipt on the annexed form.

Your cheque for £1 10 0d. substitution fee is also to hand, formal receipt for which is inclosed.

Yours faithfully,

(Signed) WADE, BILBROUGH, BOOTH & CO.

Messrs. Coffin & Stanton, Limited, 43 Threadneedle street, London, E. C.

Coffin & Stanton, Limited, 43 Threadneedle street.

LONDON, E. C., 2*d June*, 1894.

Debenture Guarantee & Ass'ce Co.

Messrs. Wade, Bilbrough, Booth & Co., Cavendish house, Bradford.

DEAR SIRS: We beg to acknowledge the receipt of your
274 favor of the 1st inst., inclosing $3,000 of the City Company of Santa Cruz 6 per cent. bonds; for which please accept our thanks.

Fort Madison Gas. Co.

We acknowledge safe receipt of £250 Fort Madison Gas Company June 1st coupons, for which also please accept our thanks.

Yours faithfully,

COFFIN & STANTON, LIMITED.

(Signed) F. H. BURR.

19—248

Nothing contained in the foregoing stipulation shall be deemed to be a waiver of any objection by either party hereto that the facts herein stipulated are incompetent, immaterial and irrelevant to the issues in the case, and any objections thereto on such grounds may be urged by either party at any time without specifically stating such objections.

Any and all errors in this stipulation may be corrected at the suggestion of either party and by reference to the original records of the defendant, or depositions on file in the case, or any further documents or testimony admitted in evidence.

CHICKERING, THOMAS & GREGORY,
Attorneys for Plaintiff.

LINDSAY & CASSIN AND
JAMES G. MAGUIRE, *Attorneys for Defendant.*

ROBERT EFFEY, a witness on behalf of plaintiff, testified as follows:

That the name "Robert Effey," signed to a document exhibited to him, was in his handwriting.

275 The document was then offered, received and read in evidence on behalf of the plaintiff, and marked "Plaintiff's Exhibit 1," which said document reads as follows:

"STATE OF CALIFORNIA, } ss:
"*County of Santa Cruz,* }

"OFFICE OF THE CITY CLERK OF THE CITY OF SANTA CRUZ.

"I, O. J. Lincoln, city clerk of the city of Santa Cruz, do hereby certify that, at a charter election held on the ninth day of April, 1894, Robert Effey was elected mayor in and for — ward of said city of Santa Cruz.

"Witness my hand and the seal of said city this eleventh day of April, 1894.

"[SEAL.] O. J. LINCOLN, *City Clerk.*

"STATE OF CALIFORNIA, } ss:
"*County of Santa Cruz,* }

"I, Robert Effey, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of California, and that I will faithfully discharge the duties of the office of mayor of the city of Santa Cruz, according to the best of my ability. So help me God.

"ROBERT EFFEY.

"Subscribed and sworn to before me this sixteenth day of April, A. D. 1894.

"O. J. LINCOLN, *City Clerk.*

"[SEAL.]"

276 (The witness then continued:) I suppose the date on which I took the oath of office is shown on the certificate. It is my

best recollection that I took the oath of office either late in the forenoon, or early in the afternoon, of said day. I am sure that it was after 11 o'clock a. m. I signed that document in the council chamber of the city, in the city hall at Santa Cruz. That council chamber is usually open for business at 8 o'clock or 9 o'clock. It was some two or three hours after the opening of the city offices for the ordinary business of the municipality when I took that oath of office.

(By Mr. THOMAS:)

Q. Mr. Effey, did you assume the duties of the office of mayor on April 16, 1894?

Mr. MAGUIRE: We object to the question as irrelevant, immaterial, and incompetent.

The COURT: Is there any bond necessary to be given?

Mr. THOMAS: No, sir; no bond is needed upon the qualification of the mayor.

The COURT: The qualification is made when the oath is taken?

Mr. THOMAS: Yes. The object of the question, and of a number of questions that will follow, to this and other witnesses, is this: We desire to prove, not only that Mr. Effey did not assume the duties of his office, or attempt to perform any of the duties of the mayor of the city until the first Monday in May, 1894, but that Mr. Jeter, who signed the bonds as mayor on April 16th, continued to perform the duties of mayor, and presided over the meetings of the common council, two of them at least, between this date and the sixteenth of May, the date when Mr. Effey assumed the du-
277 ties of mayor. We propose to go further and show that has been the uniform custom of the municipality of Santa Cruz, going back for a period of over ten years. If your honor will permit me to call your attention to the dates fixed in the statute which incorporated the city of Santa Cruz, your honor will see, any purchaser of bonds, according to our theory of the case, had a right to assume, from the transactions which had been the universal practice there for years, that the mayor and council elect did not take their offices until the first Monday in May following their election. The statute of 1876, which incorporated the city of Santa Cruz, provided that the charter election should be held on the second Tuesday in April.

Thereupon the court overruled the objection; to which ruling defendant then and there duly excepted. The witness thereupon answered: "No, sir."

(Witness then continuing, testified as follows:) In 1894 I first commenced the performance of any of the duties of mayor of the defendant on May 7th. Up to that date, Mr. William T. Jeter had assumed to act and perform the duties of mayor.

Between April 16, 1894, and May 7, 1894, when I first performed any duties as mayor, the outgoing board of common councilmen acted as councilmen, not the board elected at the time I was elected. The board elected with me first assumed the duties of their office as

members of the council of the city of Santa Cruz on May 7, 1894, the same date when I assumed my office as mayor.

O. J. LINCOLN, a witness called on behalf of plaintiff, testified as follows:

278 (By Mr. THOMAS:)

Q. Mr. Lincoln, who performed the duties of the office of mayor of the city of Santa Cruz between April 16, 1894, and May 7, 1894?

To which question defendant then and there objected upon the ground that the same was irrelevant, immaterial and incompetent. The court overruled the objection; to which ruling defendant then and there duly excepted, and now assigns said ruling as error. The witness thereupon answered: "Mr. Jeter."

Mr. Thomas here offered in evidence a resolution incorporated in a purported record of a meeting of the city council of the city of Santa Cruz, held on the twenty-third day of April, 1894, ordering and directing that the bonds here in question be delivered to Messrs. Coffin & Stanton, the minutes of said meeting showing that Mr. William T. Jeter acted as mayor, and members of the old city council, whose successors were elected on the ninth day of April, 1894, and qualified between said ninth day of April and the sixteenth day of April, 1894, acted as members of the city council.

Defendant thereupon objected to said resolution as irrelevant, immaterial and incompetent, and specified, in support of said objection, that the resolution appeared from the face of the minutes to have been adopted by persons who are not legally entitled to the offices, the functions of which they exercised at the time. The court overruled the objection; to which ruling defendant then and there duly excepted. The resolution was thereupon admitted in evidence.

279 (The witness further testified:) That he performed the duties of city clerk during that period; that he was re-elected city clerk at the charter election of 1894; that from April 16, to May 7, 1894, there were seven meetings of the common council, not including the two meetings of the common council on the seventh of May, 1894, of which two meetings one was presided over by William T. Jeter, and the second by Robert Effey; that he (the witness) signed all the bonds which form the subject of controversy in this action, as city clerk of Santa Cruz; that he signed such bonds during the week prior to the sixteenth day of April, 1894; that he did not know whether said bonds were signed by William T. Jeter before April 16, 1894; that when said bonds went out of witness's possession into Mr Jeter's possession, they were unsigned by Mr. Jeter; that witness delivered said bonds to Mr. Jeter some time during the week prior to the sixteenth of April, 1894; that the mayor and common council of the city of Santa Cruz (the old board,) on the twenty-third day of April, 1894, ordered said bonds to be delivered to Coffin & Stanton, and that on the twenty-fourth day of

April, 1894, he delivered the bonds in accordance with that order to Walter Stanton, of the firm of Coffin & Stanton.

On cross-examination the witness stated as follows:

"That he received the bonds back from Jeter on the morning of the twenty-fourth day of April, 1894, and that they then bore the signature of William T. Jeter as mayor."

WILLIAM T. JETER, a witness on behalf of plaintiff, testified:

That it was he who signed, as mayor of the defendant, the
280 bonds which are in controversy in this action; that he signed them on three several days, not consecutively; that the bonds were brought to him to sign, and were in his possession several days before he signed any of them, and that then he commenced to sign them, and did sign them, each, and after 3 o'clock; that said facts are fixed positively in his mind by the fact that the bank closed at 3, and that they were in the bank, and that the last signing was on the afternoon of the sixteenth day of April, 1894, after 3 o'clock; that the bonds, when he signed them, were in the Bank of Santa Cruz County, of which said bank witness at the time was an officer; that he did not know how many of the bonds he signed on the afternoon of the sixteenth of April, 1894; that said bonds were at the bank a number of days before he signed any of them, left there by the clerk; that witness was exceedingly busy at the time, and took up the matter only after banking hours, and deferred it as long as he could, so as to have them ready the night that the bids were to be received; that the bids were to be received on the evening of the sixteenth of April, 1894; that said bonds were at the bank several days before witness signed any of them—three or four, at least; that there were three days actually occupied in the signing of the bonds by witness—that is, a portion of three days—each time after 3 o'clock in the afternoon; that he did not know how many bonds he signed on the afternoon of the sixteenth.

(By Mr. THOMAS:)

Q. Mr. Jeter, who performed the duties of the office of mayor of Santa Cruz from April 16 to May 7, 1894?

Mr. MAGUIRE: We object to the question as immaterial, irrelevant and incompetent.

281 The court overruled the objection; to which ruling defendant then and there duly excepted. The witness thereupon answered the question as follows: "A. I acted as mayor until evening of the seventh of May, as well as I recollect."

The witness was thereupon asked the following question by plaintiff's attorney:

Q. I want to ask you, Mr. Jeter, if Mr. Robert Effey, the mayor-elect, attempted in any way, to your knowledge, to perform the duties of mayor of Santa Cruz prior to May 7, 1894?

To which question defendant's counsel objected upon the grounds that the same was irrelevant, immaterial, and incompetent. The court overruled the objection; to which ruling defendant then and

there duly excepted. The witness thereupon answered, "Not to my knowledge."

The COURT: I shall find as a fact that he was in a position to know, unless there should be some counter-evidence.

The witness was then asked the following question by plaintiff's attorney:

Q. Between the sixteenth day of April and the seventh of May, did any person question your right to act as mayor of the city of Santa Cruz?

To which question defendant's counsel then and there objected, on the grounds that the same was irrelvant, immaterial, and incompetent. The court overruled the objection; to which ruling defendant then and there duly excepted. The witness thereupon answered, "Not that I have any knowledge of."

282 The witness further testified: That he was present at and presided over all meetings of the common council of the city of Santa Cruz held between April 16, 1894, and May 7, 1894.

It was conceded by counsel that there were seven of such meetings of the old or outgoing common council.

On cross-examination the witness stated as follows:

That he did not know at that time the oath of office of Robert Effey, as mayor of the city of Santa Cruz, was filed; that the time to which he referred in his direct examination as the evening on which bids were to be received was the evening of the sixteenth of April, 1894, at which time the bids were to be opened, if any were received; that it was his best recollection that he signed all the bonds before the meeting of the sixteenth of April, 1894, held at 7.30 p. m. of said day; that it was his best recollection that the last of the bonds were signed after 3 o'clock in the afternoon of the sixteenth day of April, 1894; that the greater number of the bonds were signed at the last sitting—that is, the day that witness finished signing them; that he did not sign the bonds in any regular or numerical order from which he would be able to tell what bonds were signed on the evening of the sixteenth of April; that he had no recollection whatever whether they were arranged consecutively; that he took no notice and kept no note of the numbers of the bonds; that he signed none of the bonds on Sunday, the fifteenth day of April, 1894.

On redirect examination the witness stated:

283 That he endeavored to have all the bonds signed and ready for the evening of the sixteenth of April, 1894; that is, for the meeting on the evening of the sixteenth of April, 1894, which would be at 7.30 o'clock; that the Bank of Santa Cruz County at that time kept open until 3 o'clock in the afternoon of every week day, including Saturday; that witness was present at said bank during the times concerning which he has testified.

Plaintiff then rested.

There was offered, received, and read in evidence on behalf of the defendant, and marked "Defendant's Exhibit A," a contract entered into by and between the city of Santa Cruz and William Edward Coffin, Walter Stanton, Charles Hervey Jackson, and Charles F. Street, dated the sixteenth day of September, 1889, which reads as follows:

DEFENDANT'S EXHIBIT "A."

Contract—City of Santa Cruz and Coffin & Stanton.

"Contract entered into the sixteenth day of September, 1889, for the purchase of water works, by and between the city of Santa Cruz, a municipal corporation existing under the laws of the State of California, party of the first part, and William Edward Coffin, Walter Stanton, Charles Hervey Jackson, Charles F. Street, all of the city, county, and State of New York, and doing business under the firm name of Coffin & Stanton, the parties of the second part, witnesseth:

"Whereas, the city of Santa Cruz desires to acquire a water-works system for said city; and

"Whereas, Coffin & Stanton desire to furnish such a water-works system,

284 "Now, therefore, for and in consideration of the sum of one dollar, paid in hand this sixteenth day of September, 1889, to said city of Santa Cruz, by said Coffin & Stanton, the receipt of which is hereby duly acknowledged, and other valuable considerations, the following contract has been entered into:

"The said city of Santa Cruz agrees to grant to said Coffin & Stanton a franchise for the construction of water works in said city of Santa Cruz, and said Coffin & Stanton agree to construct, or cause to be constructed, a water-works system which shall in every way be in conformity with the specifications of the engineer employed by said city, which specifications are embodied in the report by said engineer under date of July 30, 1889; which report is hereby referred to and made a part hereof; the works to be constructed subject only to such modifications as may hereafter be mutually agreed upon, or are contained in this contract. And said city of Santa Cruz agrees to purchase said water works when the same are completed, and to pay for the same the sum of three hundred and twenty thousand dollors, as hereinafter — forth.

"And, in order to carry out the foregoing provisions of this contract, said Coffin & Stanton shall have the privilege of assigning to whomsoever they may elect, any or all of the rights herein granted.

"And said Coffin & Stanton shall organize, or caused to be organized, a corporation entitled 'City Water Company of Santa Cruz,' to which corporation shall be assigned the franchise hereinbefore mentioned.

285 "And said water company shall cause to be issued, in due and legal form, a first mortgage upon all its properties, rights, titles, and franchises, now owner of hereafter to be acquired, for an amount not to exceed four hundred thousand dollars, said bonds to

bear interest at a rate not to exceed six per cent, and to mature in not more than thirty years; and said bonds shall be dated as soon as practicable after the incorporation of said company.

"And said water company shall issue to said Coffin & Stanton at various times during the progress of the work of construction, a sufficient number of said first-mortgage bonds, as shall be required to pay for the construction of said water works, said Coffin & Stanton agreeing to make all necessary cash advances.

"It is understood, however, that said water company shall not, at any time, issue bonds in excess of three hundred and twenty thousand dollars, except as shall be hereinafter provided, to wit:

"That in the event of any changes or additions to said water-works system, as described in said report herein referred to, and then said water company shall have the right to issue a sufficient number of said first-mortgage bonds at ninety cents on the dollar to pay for such changes and additions; and said water company shall also have the right to issue bonds at a price not below ninety cents on the dollar, to pay the interest on any of the outstanding bonds of said water company, except such outstanding bonds as are held in escrow, hereinafter referred to.

286 "And when said Coffin & Stanton shall have received all of said three hundred and twenty thousand dollar bonds, and when said water company shall have completed said water works, then said Coffin & Stanton shall deposit with the American Loan and Trust Company, of New York, or such other trust company as may be agreed upon by the parties hereto, two hundred and seventy thousand dollars of said bonds, which shall be held in trust by said trust company to secure a like amount, viz., two hundred and seventy thousand dollars five per cent bonds of said city of Santa Cruz, which said city has heretofore sold to said Coffin & Stanton. And the deed of trust or escrow under which said water company bonds shall be deposited, shall provide that when any of the installments of said city of Santa Cruz five per cent bonds shall be paid by said city, then said trust company shall cancel a similar amount of the first-mortgage bonds, and continue so to do until all of said water company's bonds, deposited with them, are canceled.

"And, if said city of Santa Cruz shall default in the payment of the principal, or any of the installments thereof, or any of the interest coupons of said city five per cent bonds, and shall continue in such default for a period of six months, then said trust company shall be authorized to deliver said first-mortgage water company bonds to the holders of said five per cent city bonds, and provisions to this effect shall be contained in said deed of trust or escrow.

"And when said water company shall have fully completed
287 said water works, then said water company shall convey absolutely to said city of Santa Cruz all its property, rights, titles and franchises, to have and to hold forever, subject only to the mortgage and to the deed of trust or escrow hereinbefore mentioned.

"And said city of Santa Cruz agrees to set aside from the gross revenue derived from said water works an amount sufficient to pay the interest on said first-mortgage bonds outstanding, except those

held in escrow, and, after five years, an amount sufficient to form a sinking fund for the redemption of said outstanding bonds at maturity, except those so held in escrow. And said water company shall commence operations on the construction of said water works as soon as practicable, and shall have the whole completed within one year of such commencement; provided, however, that neither said water company nor said Coffin & Stanton shall be held in any way responsible for delays which are unavoidable or beyond their control; provided, also that said city of Santa Cruz shall convey to said water company clear and unincumbered rights to at least three-quarters of the riparian rights to Laguna creek, the proposed source of supply for said water works, or to at least three-quarters of such water.

"Also a clear right of way throughout the entire system for the laying of all necessary pipes or mains, and also clear title to all the lands necessary for reservoir sites, or to such other lands as may be found necessary for the effective operation of said water works, all of which said transfers or rights of water, rights of way, and reservoir sites, shall be subject to the legal and equitable rights of
288 said city to the performance of this contract, according to its true meaning and intent.

"And said water company shall not be called upon to begin work until such properties shall have been conveyed to said water company, and until the title to the same shall have been examined and approved by the counsel of said water company. And said Coffin and Stanton shall hold themselves personally and individually liable for any damages which may accrue to said city by the failure of said water company to construct said water works and convey the property of said water company to said city of Santa Cruz, as hereinbefore set forth. And said Coffin and Stanton do hereby guarantee the performance of all the acts of said water company herein specified. And it is hereby mutually agreed and made a part of this contract, that in the event of the failure of said Coffin and Stanton or said water company to perform their part of this contract, then said city of Santa Cruz shall be entitled to collect from said Coffin and Stanton the sum of fifty thousand dollars as liquidated damages, which sum actually represents the loss to said city of Santa Cruz by the failure of said Coffin and Stanton, or said water company, to perform their part of this contract.

"And said city of Santa Cruz agrees to enter into any further contracts or agreements with said Coffin and Stanton, or said water company, which may be necessary, effectually to carry out the spirit and intent of this contract.

289 "In witness whereof, the respective parties to these presents have hereunto set their hands and seals the day and year first hereinabove written.

"CITY OF SANTA CRUZ,
"By G. BOWMAN, *Mayor.*
"COFFIN AND STANTON.

"Attest: O. J. LINCOLN, *City Clerk.*

"(Endorsed): Filed September 16, 1889. O. J. Lincoln, city clerk."

There was then offered, read, and received in evidence on the part of the defendant, and marked "Defendant's Exhibit B," a contract of the city of Santa Cruz for the sale of $270,000 five per cent. bonds, which reads as follows:

DEFENDANT'S EXHIBIT "B."

Memorandum as to Sale of Bonds.

"Memorandum of agreement in the matter of the sale of two hundred and seventy thousand dollars five per cent. bonds of the city of Santa Cruz and in the matter of the purchase of water works by said city of Santa Cruz.

"Whereas, Coffin and Stanton have purchased two hundred and seventy thousand dollars five per cent. bonds of the city of Santa Cruz, and have entered into an agreement under date of the sixteenth of September, 1889, with the city of Santa Cruz, for the sale to said city of certain water works named therein; and

"Whereas, it is desired that the proceeds of the sale of said
290 bonds shall be used solely for the purpose of said works or the redemption of said bonds.

"Now, therefore, it is agreed between said city of Santa Cruz and the said Coffin and Stanton, that said city shall deposit with said Coffin and Stanton the sum of two hundred and forty-five thousand dollars of said proceeds, which sum shall be placed to the credit of said city of Santa Cruz on the books of said Coffin and Stanton, for the use of City Water Company of Santa Cruz, referred to in said contract of September 16, said Coffin and Stanton agreeing to use said fund to carry out the contract hereinbefore mentioned; or, in the event of the failure of said city to acquire said water works in accordance with said contract, then said fund shall be applied by said Coffin and Stanton to the retirement and redemption of the aforementioned two hundred and seventy thousand dollars five per cent. bonds of said city of Santa Cruz, and for the repayment to said city of any payments it may have made on said bonds; or, said Coffin and Stanton and the individual members of said firm, shall be personally liable for the full amount.

"And it is hereby mutually agreed and made a part of this contract, that in the event of the failure of said Coffin and Stanton to perform their part of this contract, then said city of Santa Cruz shall be entitled to collect the sum of three hundred thousand dollars as liquidated damages from the said firm of Coffin and Stanton, or from any or all of the individual members thereof, namely, William Edward Coffin, Walter Stanton, Charles Hervey Jackson, and Charles F. Street, all of the city and county and State of
291 New York, the aforementioned sum of three hundred thousand dollars actually representing the loss to said city of

Santa Cruz from the failure of said Coffin and Stanton to perform this part of their contract.

"And it is further agreed that when the contracts for the construction of said water works are awarded, if they shall be awarded by said water company, that said Coffin and Stanton shall secure from such contractors good and sufficient bonds in the amount of one hundred and fifty thousand dollars, which bonds shall be assigned and delivered to said city of Santa Cruz as additional security for the fulfillment of this agreement and of the contracts hereinbefore referred to.

"In witness whereof, the respective parties to these presents have hereunto set their hands and seals this the twenty-third day of September, 1889.

"G. BOWMAN, [SEAL.]
"*Mayor of Santa Cruz.*
"COFFIN AND STANTON. [SEAL.]

"Signed, sealed, and delivered in the presence of—
"O. J. LINCOLN, *City Clerk.*

"(Endorsed:) Filed September 23, 1889. O. J. Lincoln, city clerk."

DEFENDANT'S EXHIBIT "C."

Trust Deed.

The defendant then offered and read in evidence a trust deed or mortgage, executed by the City Water Company of Santa Cruz, a corporation, to the Holland Trust Company, of New York, and dated May 1, 1890, which said trust deed or mortgage was marked "Defendant's Exhibit C," and reads as follows:

292 "This indenture, made this first day of May, in the year of our Lord one thousand eight hundred and ninety, between the City Water Company of Santa Cruz, a corporation duly organized and existing under and in pursuance of the laws of the State of California, party of the first part, and the Holland Trust Company, of New York, a corporation duly organized and existing under and in pursuance of the laws of the State of New York, as trustee, hereinafter called the trustee, party of the second part, witnesseth:

"Whereas, the said party of the first part is authorized to construct, maintain, and operate water works in the city of Santa Cruz, State of California, for the purpose of supplying the said city of Santa Cruz and the citizens of said city and the vicinity with water, and also to erect and maintain the necessary buildings, plants, machinery, fixtures, and appurtenances of every sort for supplying the inhabitants of the city and vicinity with water, and for other purposes, and carrying on the business incidental thereto, and the said company is the owner and holder of a grant from said city of Santa Cruz of the franchise and privilege of constructing and operating such water works, and the said company, in virtue of the powers,

rights, and privileges vested in it by virtue of the laws of the State of California and the said grant from the city of Santa Cruz, is now constructing and operating said water works; and

"Whereas, at a meeting of the stockholders of the said party of the first part, held at its place of business in the city and county of San Francisco, State of California, on the twenty-first day of
293 April, A. D. 1890, duly called by its board of directors and notified as required by law, the following resolution was adopted by the vote of the holders of all the shares of the company then issued:

"First. Resolved that for the purpose of procuring means to construct, maintain, extend, and complete the water works of the company, and to pay all its indebtedness, et cetera, it is expedient and necessary for the company to borrow the sum of four hundred thousand dollars and to issue its bonds therefor, and to secure the payment of the same as authorized by law.

"Second. Resolved, that the president be, and he is hereby authorized to negotiate such loans, and for that purpose to make and execute a series of bonds of the company, four hundred in number, and each for the sum of one thousand dollars, and numbered from one to four hundred, all bearing date the first day of May, A. D. 1890, and payable to the Holland Trust Company of New York, trustee, or bearer, on the first day of May, A. D. 1910, or at such times as its sinking fund hereafter to be established shall be able to redeem said bonds, said bonds to be redeemed at par according to number, beginning at the lowest, with interest from this date at the rate of six per cent. per annum, payable semi-annually on the first days of May and November in each year, according to coupons to be attached thereto; both principal and interest to be payable in the city of New York in gold coin of the United States of the present standard of weight and fineness, and also to secure the payment of said bonds and the interest thereon by a pledge of the property and income of this company.

294 "Third. Resolved, that the said bonds shall be substantially in the form following, to wit:

"No. —. $1,000.

"UNITED STATES OF AMERICA, *State of California.*

"*The City Water Company of Santa Cruz Six per Cent. First mortgage Gold Bond.*

"Total issue, $400,000.

"The City Water Company, of Santa Cruz, a corporation of the State of California, hereby acknowledged itself to owe to the Holland Trust Company, of New York, trustee, or bearer, one thousand dollars, which it promises to pay to the bearer hereof at the office of said The Holland Trust Company of New York, in the city of New York, in lawful gold coin of the United States of America, of the present standard of weight and fineness, on the first day of May in the year one thousand nine hundred and ten, except as herein-

after provided, with interest thereon from and after the date hereof, at the rate of six per cent. per annum, payable in like gold coin, semi-annually, at the office of said The Holland Trust Company, on the first days of May and November in each year, upon the surrender of the annexed coupons therefor, until the principal sum shall be fully paid.

This is one of a series of four hundred bonds issued by this company, numbered one to four hundred inclusive, each of which is for the sum of one thousand dollars, all bearing the same date with this bond, and in all respects of the same tenor and effect, and the payment of which, both principal and interest, is secured by
295 the mortgage of said company to said The Holland Trust Company, of New York, trustee, *of even date herewith, on all* the real property, machinery, engines, houses, pumps, wells, reservoirs, stand pipes, mains, and water-plant fixtures of said company, and on all its equipment and other property, real and personal, connected with or appurtenant to said water works, or used or provided for the operation and maintenance thereof, now owned or hereafter acquired, together with all the rights and franchises of said company thereunto appertaining, and said bonds are subject to the provisions of said mortgage executed and delivered to said The Holland Trust Company of New York, and recorded, to which reference is made for the provisions thereof and the full conditions hereof.

Said bonds may be redeemed whenever the sinking fund is sufficient therefor, at par, according to the numbers of said bonds, beginning with the lowest number.

Upon default in the payment of any installment of interest of this bond for sixty days after such installment shall become due and payable, the principal hereof shall thereupon become due and payable, upon the condition and in the manner and with the effect as provided and set forth in the said mortgage or deed of trust. It is agreed between the said City Water Company of Santa Cruz and the holder of this bond that, in case of default in the payment of the principal or interest thereof the said company will waive, and does hereby waive, the benefit of any extension, stay, redemption, or appraisement laws, now existing, or which may hereafter be enacted. This bond shall not become obligatory until the certificate indorsed hereon is duly signed by the trustee.

296 In witness whereof the said The City Water Company of Santa Cruz has caused its corporate seal to be hereunto affixed, and this bond to be subscribed and attested by its president and secretary on this first day of May, in the year eighteen hundred and ninety.

CITY WATER COMPANY OF SANTA CRUZ,
By F. R. KING, *President.*

[Seal of the City Water Company of Santa Cruz.]

Attest: E. H. RIXFORD, *Secretary.*

Form of Coupon.

$30. $30.

On the first day of ——, the City Water Company of Santa Cruz will pay the bearer hereof thirty dollars, at the Holland Trust Company of New York, in the city of New York, being six months' interest on its first-mortgage bond No. —.

F. R. KING, *Pres't.*
E. H. RIXFORD, *Sec'y.*

The interest coupons attached to all of said bonds shall be authenticated and evidenced by the signatures of the president and secretary of the company engraved thereon, which shall be regarded and treated as in all respects, in fact and in law, equivalent to a manual signing thereof.

Fourth. Resolved, That the pledge of the property and income of this company to secure the payment of said bonds and the interest thereon shall be in the form of a mortgage or deed of trust, and to that end this company will make, execute, and deliver to the
297 Holland Trust Company, of New York, trustee, a mortgage deed upon all and singular the franchises, rights of way, and privileges granted to said water works company; all the real estate, houses, pumps, machinery, reservoirs, stand pipes, hydrants, and all mains and distributing pipes; also all buildings, plants, machinery, fixtures, and appurtenances and privileges for supplying the citizens of said city of Santa Cruz and the vicinity thereof with water, and all other property now owned, or that may be hereafter acquired by said company, including all rents of hydrants and incomes from water rents, and all revenues or emoluments of said company, delivered from the said water works, by such pertinent description in general and in detail as the president of this company may approve and have incorporated in said mortgage.

Such mortgage, when recorded, shall be a lien upon all the property of this company, including all rights, privileges, franchises, tolls, income, rights of way, leases, grants, liens, equipment, and all the other property, real and personal, of said company, now owned or which may hereafter be acquired, as fully as the same may be set forth therein, and shall be in trust for the equal benefit and security of the holders of said bonds, without reference, priority, or distinction as to lien or otherwise, so that each of them have the same rights, lien, privilege, and security, as though they had all been executed, issued, and delivered simultaneously with the execution and delivery of this mortgage, and said mortgage shall provide that a sinking fund to redeem said bonds shall be established by this company after five years from the date of said mortgage,
298 by paying annually to the said Holland Trust Company of New York, as trustee, two per centum of the amount of bonds secured by said mortgage; and if all said bonds be not issued at said time, then two per centum of the amount then outstanding, and such mortgage may also contain such other terms, provisions, restrictions, and limitations as the president of this company may approve, and have incorporated therein.

Fifth. Resolved, That none of said bonds shall be issued, or be entitled to the benefit of the security of said mortgage, or be in anywise obligatory upon this company as evidence of debt or otherwise, unless or until the said Holland Trust Company of New York, as such trustee, or its successor or successors in such trust, shall have authenticated the same as being so issued and secured, by signing a certificate indorsed thereon, substantially in the form following, to wit:

"The Holland Trust Company of New York hereby certifies that this bond is one of a series of bonds amounting in the aggregate to four hundred thousand dollars, mentioned in the mortgage referred to within.

HOLLAND TRUST COMPANY OF NEW YORK,

By —— ——, *Trustee.*

(Signed) —— ——, *President.*

Sixth. Resolved, That the president and secretary be, and they are hereby authorized and empowered, for and on behalf of this company, to execute each of said bonds by affixing thereto its name and corporate seal, attested by the secretary, and by signing the same as such president, and, when so executed, to deliver the same to said trustee for authentication as aforesaid, and also to make and execute the said mortgage or deed of trust under the corporate name of this company, subscribed by the president, with the corporate seal thereto attached, attested by the secretary, and to acknowledge the same as required by law, and when so acknowledged, the same shall be delivered to said trustee and duly recorded.

And whereas, the board of directors of the said party of the first part, at a meeting held at the office of the company, in said city and county of San Francisco, on the twenty-first day of April, 1890, duly and regularly called, noticed, and convened, did adopt a resolution of like tenor and effect as the foregoing; and

Whereas, the said party of the first part has made and executed its said bonds of even date herewith, for the amounts and of the number, form, denomination, and character prescribed and authorized by the resolutions aforesaid, and hold the same to be authenticated, and disposed of in accordance with the provisions and requisitions of said resolutions, and as authorized by law;

Now, this indenture witnesseth: that the said party of the first part, for the purpose of securing the payment of the principal and interest of the said bonds, when and as the same shall become due and payable, according to the tenor and effect of said bonds so made and executed, and in consideration of the premises, and of the sum of one dollar, lawful money of the United States of America, to it in hand paid by the said party of the second part, at the time of the execution and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, set over, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, assign, set over, release, convey, and confirm, unto the said party of the second part, and to its

successor or successors, in the trust hereby created, and to its, his, or their assigns, all and singular, and the entire property of the City Water Company of Santa Cruz, including all rights, power, privileges, and franchises which may have been granted to or conferred upon said party of the first part by the State of California, or which may hereafter be so granted or confirmed, together with all estate and property, real, personal, and mixed, now owned or which may hereafter be acquired by the party of the first part, situated in the city of Santa Cruz and vicinity, and all erections, and buildings, all machinery, engines, reservoirs, pumps, wells, pipes, and other constructions, tools, implements, and fixtures of every kind and nature, made, manufactured, constructed, built, laid, purchased, or in any way acquired, in or about the construction, maintenance, and operation of said water works in the State of California aforesaid; and all income, rents, profits, emoluments, and moneys derived from said water works, including any sum or sums of money which may be paid by the said city of Santa Cruz, and the inhabitants thereof, under and by virtue of any contract with either of them, and including any revenue from any other source whatsoever, or which may be payable to or collectible by said company under the constitution and laws of the State of California;

To have and to hold the said above-described premises,
301 property, rights, franchises, and appurtenances unto the said trustee, its lawful successor or successors, and assigns forever.

In trust, nevertheless, it being expressly covenanted and agreed between the parties hereto, the said party of the first part covenanting as well for itself as for its successor, successors, or assigns, that the above-described premises, property, rights, franchises, and appurtenances are to be had and holden by the said party of the second part upon and for the trusts, uses, and purposes following, that is to say:

Article first.

For the equal benefit and security of all and every the persons or bodies corporate who shall be, or at any time become, the holders of said bonds, or such of them as shall be issued by the party of the first part without preference, priority, or distinction, as to the lien, or otherwise, of any of the said bonds over the others by reason of priority in the time of issuing the same, and so that each and all of the said bonds issued and to be issued as aforesaid, shall have the same right, lien and privilege under and by virtue of this mortgage, and shall all be equally secured hereby with like effect as if they had all been made, executed, and delivered simultaneously with the delivery hereof.

And it is further covenanted and agreed that the party of the first part, after five years from the date hereof, shall establish a sinking fund for the redemption of the bonds hereby secured, by paying to the trustee annually a sum equal to two per centum of the par value of said bonds, or, if all said bonds have not been issued, two
302 per centum of the amount then outstanding, and that said bonds shall be redeemed thereafter at the option of the said

party of the first party as fast as the amount of said sinking fund is sufficient therefor, and at par, according to their number, beginning with the lowest number.

Article second.

And whereas, it was and is the intention that the gross income, revenue, and rentals to be derived and received under any ordinance or contract of or with the city of Santa Cruz, or other municipal corporation, or so much thereof as may be sufficient to pay the interest upon outstanding bonds secured hereby, and to establish the sinking fund hereinafter provided for, to be applied to the payment of such interest and the establishment of said fund, it is agreed by the said party of the first part that said gross income, revenue and rentals so derived, or so much thereof as may be required for the aforesaid purposes, be paid directly to the said party of the second part; and the said party of the first part does now hereby grant, convey, assign, transfer, and set over unto said party of the second part, its successor or successors, its, his, or their assigns, such and so much of said gross income, revenue, and rentals aforesaid to be used and applied in the payment of said interest and the establishment of said sinking fund, and with full power and authority hereby vested in said trustee and in its own name or otherwise, to demand, sue for, recover, collect, and receive the same, and by proper receipts in its own name, or otherwise, to discharge
303 and acquit the said city and other municipal corporations from all liability, claim, or demand, to the extent of the payment made to it from time to time.

Article third.

Until default shall be made by the party of the first part in the payment of the principal or interest of the said bonds, or any of them, according to the tenor and effect of said bonds and of this mortgage, and on the days, times, and place mentioned therein respectively, without further delay, or until default be made by the party of the first part in respect to some act, or thing, covenant, or agreement in any of the said bonds, or herein, required to be kept and performed, the party of the first part shall be permitted to possess, manage, operate, use, and enjoy, all and singular said property, with the appurtenances thereto, hereinbefore described.

Article fourth.

If the party of the first part, its successor, successors, or assigns, shall, at any time hereafter, after demand made make default, or refuse, neglect, or omit for any period exceeding sixty days, to pay the semi-annual interest on the bonds intended to be hereby secured, or any of them, or shall after demand made, make default, refuse, neglect, or omit for any period after the maturity thereof, to pay the principal sum of each and all of the said bonds, or shall suffer or allow any lawful taxes or charges to fall in arrears, whereby the security of this mortgage may be impaired, or shall refuse or fail to

keep or perform any of the covenants and stipulations contained herein, or in the bonds secured, or intended to be secured
304 hereby, and on its part to be kept and performed, then, and in either of such events, the party of the second part may, upon the written request of the holders of one-third in amount of the bonds secured hereby and then outstanding, and upon receiving satisfactory security and indemnity against all costs, expenses, and liabilities to be by the party of the second part incurred, and not otherwise, forthwith demand and with such force as may be necessary, enter upon, take, and maintain possession of all and singular the water works, and all the estate, premises, rights, contracts, and franchises hereby conveyed and mortgaged, or agreed or intended so to be, and as the attorney-in-fact or agent of the party of the first part, by its agents and substitutes, duly constituted, or by its managers, superintendents, receivers, or servants, have, hold, use, manage, operate, and enjoy the same, and each and every part thereof, to as full an extent as the said party of the first part might lawfully do, making from time to time all needful and proper repairs, alterations, and additions, and receiving all tolls, income, and revenue thereof, and after deducting expenses of such use, operation, reasonable repairs, alterations and additions, all lawful taxes and assessments on said water works and property, and the costs or charges of such taking possession, and proper compensation for its services for taking possession and management while in possession, and such sum or sums as may be sufficient to indemnify it against any liability, loss, or damage, for or on account of any matter or thing done by it in good faith and in pursuance of its duties as said trustee; and the party of the second part shall apply the remainder, net income, and revenue therefrom, without giving preference,
305 priority, or distinction to one bond over another, to the payment: First, of the interest due on the bonds then outstanding, hereby secured or intended so to be, in full, if said income and proceeds be sufficient; but, if not, then *pro rata*. Second, of the principal of the said bonds in full, if the said income and proceeds be sufficient; but, if not, then *pro rata*. And if, after such satisfaction, a surplus shall remain to pay over to the said party of the first part, or as any court of competent jurisdiction shall direct.

After such payment, the property to be restored to the party of the first part, subject, however, to the covenants and conditions of this indenture, and to the same extent as if said entry had never been made. Or, the said party of the second part may, after or without entering upon or taking such possession, upon the written request of the holders of a like amount of said bonds then outstanding, and upon like security and indemnity, proceed to sell and dispose of all and singular the said water works, corporate rights, franchises, and premises hereby mortgaged, or agreed or intended so to be, to the highest and best bidder at public auction in the city of New York, or at such place as the said trustee may designate, and at such time, as it shall appoint, having first given notice of the time and place of such sale by advertisement published not less than twice in each week for six weeks in one or more newspapers published

in the city of New York, and in the city of Santa Cruz, State of California, or with power in said trustee to adjourn said sale from time to time, in its discretion, and after so adjourning, to make such sale at the time and place to which the same may be so adjourned,
306 and thereupon to make and deliver to the purchaser or purchasers of the said water works and their appurtenances, and all other, the said property and franchises thereto belonging, good and sufficient deed or deeds in law, in fee-simple, free from all and every of the trusts hereby created, and without obligation on the part of purchaser to inquire into the necessity, expediency, or authority, of or for any such sale, which sale so made as aforesaid shall be a perpetual bar both in law and in equity against the party of the first part, and all persons claiming or to claim the said described premises and property, or any part thereof, or any interest therein, by, from, under, or through the party of the first part, and after deducting from the proceeds of such sale proper allowances for all the expenses thereof, including attorney and counsel fees, and all other expenses, additions, or liabilities which may have been paid or incurred by it for taxes, or assessments on the said water works or the appurtenances, or other property thereto belonging, or any part thereof, as well as reasonable compensation for its own services, it shall be lawful for the trustee, and it shall be *his* duty to apply the residue of the money arising from the said sale, without giving preference, priority, or distinction to one bond over another, to the payment:

First. Of the interest due on said bonds outstanding, secured or intended to be secured hereby, but ratably and without preference or priority; and

Second. Of the principal of said bonds in full, if the said purchase-money, after deducting the expenses and interest above mentioned, be sufficient; but if not, then *pro rata*. And, in the event of there being in the hands of the trustee any portion of the trust
307 estate or the proceeds thereof, after the payment in full of the principal and interest of such bonds, then the trustee shall reconvey, transfer, and pay over such surplus to the party of the first part, its successor, successors, or assigns, for its or their sole use and benefit.

Or, the said trustee may, upon the written request of the holders of a like amount of said bonds, then outstanding, and upon like security and indemnity proceed to protect and enforce the rights of the bondholders under these presents, by a suit or suits in equity or at law, whether for the specific performance of the stipulated covenants and agreements, or any of them, contained herein, on the part of the party of the first part to be kept and performed, or whether in aid of the execution of the power herein granted, or otherwise, as the trustee being advised by counsel learned in the law shall deem most effectual to protect and enforce such rights, it being understood, and it is hereby expressly declared that the rights of entry and of sale hereinbefore granted, are intended as cumulative remedies, additional to all other remedies, allowed by law, and that the same shall not be deemed in any manner whatever to de-

prive the trustee or the beneficiaries under this trust of any legal or equitable remedy by judicial proceedings consistent with the provisions of these presents, according to the true intent and meaning thereof.

Article fifth.

And it is hereby expressly declared and agreed that no holder or holders of a bond, or of any bonds or coupons secured hereby, shall have the right to institute any suit, action, or proceeding
308 in equity or in law, for the foreclosure of this mortgage, or the execution of the trust thereof, or for the appointment of a receiver, or for any other remedy, without first giving thirty days' notice in writing to the trustee of the fact that default has occurred and continued as aforesaid, nor unless one-third in amount of the holders of the bonds then outstanding have made request in writing to the trustee as above provided, and have afforded it a reasonable opportunity to proceed to execute the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name, and have also offered to it adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby, and such notification, request, and offer of indemnity are hereby declared to be conditions precedent for the execution of the powers and trust of this mortgage to any action, or cause of action, for the foreclosure of the said mortgage, for the application for the appointment of a receiver, or for any other remedy hereunder, it being understood and intended that no one or more holders of bonds or coupons shall have the right in any manner whatever to affect, disturb, or prejudice the lien of this mortgage, by his or their action, except in the manner herein provided, but that all proceedings in law or equity shall be instituted, had, and maintained for the equal benefit of all holders of said bonds and coupons outstanding.

Article sixth.

And it is further expressly covenanted and agreed that, if the party of the first part, its successor, successors, or assigns,
309 shall, at any time hereafter, after demand made, make default, refuse, neglect, or omit for any period exceeding sixty days, to pay the semi-annual interest on the bonds intended to be hereby secured, or any of them, then the holders of one-third in amount of said bonds may elect to declare the whole principal sum thereof to be due and payable, and may, by an instrument in writing under their hands and seals, instruct the said trustee to declare said principal sum to be due and payable, whereupon the whole principal sum of each and all of said bonds then outstanding, shall forthwith be due and payable, notwithstanding that the time limited therein for the payment thereof may not then have elapsed; and in the event of any sale of the water works hereby mortgaged, or agreed or intended so to be, whether by the trustee or by judicial proceeding, as hereinbefore mentioned, then and in either such case, the whole principal sum of each and all of said bonds then outstanding and intended to be thereby secured, shall forthwith be due

and payable, notwithstanding that the time limited therein for the payment thereof may not have expired; and in no other case and for no other purpose, except as in this article provided, shall the principal sum of any said bonds become due and payable before the date fixed in said bonds for the payment thereof. This provision is expressly declared not to be in the nature of a penalty for a breach of condition, or for the non-payment of interest, but to be a provision which, having regard to the nature of the mortgaged premises, and the impossibility of a sale thereof in parcels, without serious prejudice to all interests, is essentially necessary to effectuate the objects and purposes of the parties hereto.

310 Article seventh.

And it is expressly covenanted and agreed that at the sale of the aforesaid water works, property, franchises, or appurtenances, or of either or any part thereof, hereinbefore conveyed, made by virtue of the power hereinbefore granted, or by judicial authority for the purpose of enforcing the lien of these presents, the party of the second part, its successor or successors, may, at its or their own discretion, and if a majority in interest of the holders of said bonds, by an instrument or concurrent instruments, in writing, signed by them, or their attorney, should instruct them so to do, shall personally or by agent or attorney bid for, and, if the same be attainable, at the price hereinafter mentioned, purchase and acquire the property so offered for sale on behalf of all holders of the bonds secured by this instrument which may then be outstanding, or such of them as shall then signify to said trustee in writing their desire to have such purchase made on their behalf in proportion to the respective interests of such holders in the said bonds and the coupons thereto belonging; provided, however, that nothing herein contained shall authorize the said trustee to bid on behalf of the holders of said bonds a sum exceeding the whole amount of the said bonds then outstanding, with the interest accrued thereon, and the expenses of such sale for the entire property then held upon the trust of this instrument, or an amount reasonably proportionate thereto, for any part of said property. And it is hereby further agreed that the bonds and overdue coupons aforesaid shall be received in payment of the
311 purchase-money of any property sold at such sale, as equivalent to so much of the said purchase-money as would be distributable and payable thereon.

Article eighth.

The party of the first part hereby covenants and agrees with the said trustee, party of the second part, its successor or successors, that it or its successor, successors, or assigns, from time to time, and at all times upon reasonable request, shall and will make, execute, and deliver at its own expenses all such further acts, deeds, conveyances, and assurances in law, for the better assurance unto the said trustee, and its successor or successors in the trust hereby created, upon the trusts and for the purposes herein expressed or intended, all and

singular the water works, property, real, personal, and mixed, rights, privileges, and franchises hereby mortgaged, or conveyed in trust, or intended so to be, now owned or possessed, or which may hereafter be acquired by or vested in the said party of the first part, its successor or successors, or assigns, as by the said party of the second part, or its counsel learned in the law, shall be reasonably advised or required.

Article ninth.

The party of the first part hereby agrees to waive and does hereby irrevocably waive the benefit and advantage of any and all stay, exemption, extension, valuation, and appraisement laws, now existing and which may hereafter be passed by the United States, or any of the States thereof, and all other laws now existing, or which may hereafter be passed by the United States, or any of the States thereof, which may or might prevent, postpone, hinder, or
312 delay the exercise of the right of the party of the second part to enter upon, operate, or sell the mortgaged premises, or any part thereof, or to commence or to continue any action or proceeding in regard thereto, or the exercise of any powers, rights, privileges, and remedies of the party of the second part, or any bondholders under and in accordance with the provisions hereof. The party of the first part hereby expressly covenants and agrees not to claim, set up, or take the benefit or advantage of any law or laws.

Article tenth.

The party of the first part shall and will, from time to time, pay and discharge all taxes, assessments, and all charges lawfully imposed upon the said water works, and other hereby mortgaged premises, or upon any part thereof, and will not suffer any mechanics', laborers', or other statutory liens upon any part of the property hereby conveyed, or intended so to be, the lien or liens of which might or could be held to be prior to the lien hereof, so that the priority of the mortgage may be duly preserved, and shall not and will not suffer any matter or matters, or thing or things whatsoever, whereby the lien of this indenture might, or could, be impaired, until the said bonds hereby secured, with all interest accrued thereon according to the terms hereof, shall be fully paid and satisfied.

Article eleventh.

Upon the filing of a bill in equity, or other commencement of judicial proceedings to enforce the rights of the trustee and
313 of the bondholders under these presents, or to protect any of the property hereby conveyed from sale upon any execution or decree of any court within the State of California, for the payment of money, the said trustee shall be entitled to exercise the right of entry herein conveyed, or to the appointment by any court of competent jurisdiction, of a receiver or receivers of the property hereby mortgaged, and of the earnings, income, revenue, rents, issues, and profits thereof, pending such proceedings with such powers as the court making such appointment shall confer.

Article twelfth.

And it is hereby further covenanted and agreed, and the trusts created by this instrument are accepted upon the express condition that the trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the party of the first part to retain or be in possession of the water works, estates, and premises hereby mortgages, or agreed or intended so to be, or any part thereof, and to use and enjoy the same; nor shall the trustee be or become reponsible or liable for any destruction, deterioration, loss, or injury, or damage, which may be done or occur to the said water works and estates hereby mortgaged, or agreed or intended so to be, either by the party of the first part, or its agents or servants, or by any other persons or person whomsoever; nor shall the trustee be in any way responsible for the consequences of any breach on the part of the party of the first part of any of the covenants herein contained, nor of any act of the party of the first part, its agents or servants, nor shall the trustee be held liable for any act, de-
314 fault, or misconduct of any agents or persons employed by it, unless chargeable with gross negligence in the selection or continuance of their employment, nor shall such trustee be answerable, except for its own willful default or gross misconduct, and in case the trustee shall go into possession of said mortgaged premises, and operate the same as hereinbefore provided, it shall be indemnified out of the funds and property which shall come into its hands as aforesaid, for all claims, and demands, against it arising from negligence, carelessness, or misconduct of its officers, agents, or employees; and in all cases the trustee shall be authorized to pay such reasonable compensation as it may deem proper to all attorneys, servants, and agents whom it may reasonably employ in the management of the trust; and the trustee shall be entitled to and shall have just compensation for all services which it may render hereafter in connection with the trust, to be paid by the party of the first part as they are incurred, or out of the estate on which they are hereby made a charge; and the trustee may resign from the trust, by notice in writing to the party of the first part and to all known bondholders of sixty days before such resignation shall take effect, or such shorter time as may be accepted as sufficient notice, and upon the execution and delivery, if such shall be required, of the deed of conveyance and transfer to a successor in trust.

It is expressly agreed between the parties hereto that in case the party of the second part shall hereafter become by law, or otherwise, incapacitated to perform, or shall refuse to perform, the duties herein imposed upon it, then its successor or successors shall
315 be appointed, who shall by such appointment become vested with all the rights, powers, and duties herein imposed upon the said party of the second part. Such appointment shall be made in the manner following: A meeting of the holders of the bonds shall be called in the city of New York, by an advertisement once in each week for sixty days, in one daily paper published in the city of New York, and in one daily paper published in the city of

Santa Cruz, State of California, at the expense of the party of the first part, in which advertisement the time and particular place of such meeting, and the object of the meeting shall be stated; such call shall be made by the president of the party of the first part, or, in case of his neglect or refusal to make the same, then by any of the holders of the said bonds; and the person or persons who shall be appointed at such meeting by a majority of the votes represented at said meeting (each bondholder in person or by proxy in writing being entitled to one vote for each and every bond held by him) shall be such successor or successors, as the case may be, and the minutes of said meeting, signed by the president and secretary thereof, shall be due evidence of such appointment.

Article thirteenth.

In the execution of the interest warrants and coupons secured by these presents, the signature of the president and secretary engraven thereon shall be regarded and treated as in all respects, in fact and in law, equivalent to a manual signing of said coupons.

Article fourteenth.

If the party of the first part shall well and truly pay the
316 sums of money as provided by the said bonds secured hereby and the coupons thereto attached, required to be paid by it, and shall well and truly keep and perform all the covenants, agreements, and undertakings herein and hereby assumed and required to be kept and performed, according to the true intent and meaning of these presents, then and in that case, the estate, right, title, and interest of the said party of the second part, trustee, or its successor or successors, shall cease, determine, and become void.

In witness whereof, the party of the first part has caused its corporate name to be hereunto subscribed by its president, and its corporate seal affixed, attested by its secretary, and in testimony of its acceptance of the trusts herein created and conferred, the said trustee, party of the second part, has caused its corporate name to be hereunto subscribed by its president and its corporate seal affixed, attested by its secretary, the day and year first above written.

[CORPORATE SEAL.] CITY WATER COMPANY OF SANTA CRUZ,
By F. R. KING, *President.*

Attest: E. H. RIXFORD, *Secretary.*

[CORPORATE SEAL.] HOLLAND TRUST COMPANY,
By G. VAN NOSTRAND,
Acting President.

Attest: GEO. W. VAN SICLEN, *Secretary.*

317 Signed, sealed, and delivered as to the City Water Company of Santa Cruz, in the presence of—
H. J. LAND.

Signed, sealed, and delivered as to the Holland Trust Company of New York, in presence of—
WILLIAM H. CLARKSON.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

On this fourteenth day of May, A. D. 1890, before me, Geo. T. Knox, notary public in and for said city and county of San Francisco, duly commissioned and sworn, personally appeared F. R. King, known to me to be the president, and E. H. Rixford, known to me to be the secretary of the City Water Company of Santa Cruz, the corporation that executed the within instrument, and they duly acknowledged to me that such corporation executed the same. And the said F. R. King and E. H. Rixford, being by me duly sworn, did each depose and say that he, the said F. R. King, was the president of the said City Water Company of Santa Cruz, said corporation, and that he, the said E. H. Rixford, was the secretary of the same corporation; that the seal affixed to the foregoing instrument was the corporate seal of said corporation; that it was affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order, as the president and secretary of said corporation respectively.

Witness my hand and official seal the day and year last above written.

[NOTARIAL SEAL.] GEO. T. KNOX,
Notary Public.

318 STATE OF NEW YORK, } ss:
City and County of New York, }

On this fourth day of June, A. D. 1890, before William H. Clarkson, notary public for New York county, and a commissioner of deeds for the State of California, in and for the State of New York, residing in said city of New York, personally appeared G. Van Nostrand, acting president, and George W. Van Siclen, secretary of the Holland Trust Company, the corporation that executed the foregoing instrument as trustee, to me personally known to be the identical persons described in and whose names are affixed to the foregoing instrument as acting president and secretary of said corporation trustee, and severally acknowledged that said corporation trustee executed the same. And the said G. Van Nostrand being by me first duly sworn, and the said George W. Van Siclen being also by me first duly sworn, they did depose and say that he, the said G. Van Nostrand, was the acting president of the said The Holland Trust Company; that he, the said George W. Van Siclen, was the secretary of the same company; that the seal affixed to the foregoing instrument was the corporate seal of said company; that it was affixed thereto by the order of the board of directors of said company; and that they signed their names thereto by the like order as the acting president and secretary of said company respectively.

Witness my hand and official seal the day and year last above written.

[SEAL.] WILLIAM H. CLARKSON, [SEAL.]
319 *Commissioner for the State of California in New York,*
Notary Public for New York County, N. Y.

Filed for record, at the request of E. H. Rixford, June 12, 1890, at thirty minutes past 1 o'clock p. m.; and recorded June 27, 1890.

STATE OF CALIFORNIA, } ss:
County of Santa Cruz, }

I, Ed. Martin, county clerk of the said county of Santa Cruz, State of California, and *ex officio* county recorder in and for said county, do hereby certify that I have compared the foregoing copy with the original record of the trust deed or mortgage from the City Water Company of Santa Cruz to the Holland Trust Company of New York, dated May 1, 1890, and recorded in volume 66 of Mortgages, at page 1, *et seq*, said Santa Cruz county records; and that the same is a full, true, and correct transcript of such original record, and of the whole thereof.

Attest my hand and the seal of said county recorder hereto affixed this thirtieth day of October, A. D. 1897.

ED. MARTIN,
County Recorder,
By B. R. MARTIN,
Deputy Recorder.

[SEAL.]

The defendant then offered and read in evidence a deed of escrow, executed by said City Water Company of Santa Cruz to said Holland Trust Company, dated May 1, 1890, which was marked "Defendant's Exhibit D," and reads as follows:

320 DEFENDANT'S EXHIBIT "D."

Deed of Escrow.

"This indenture witnesseth, whereas, on the sixteenth day of September, 1889, William Edward Coffin, Walter Stanton, Charles Hervey Jackson and Charles F. Street, doing business under the firm name of Coffin & Stanton, entered into a contract with the city of Santa Cruz, in the State of California, in the following words and figures, to wit:

'Contract entered into this sixteenth day of September, 1889, for the purchase of water works, by and between the city of Santa Cruz, a municipal corporation, existing under the laws of the State of California, party of the first part, and William Edward Coffin, Walter Stanton, Charles Hervey Jackson and Charles F. Street, all of the city, county and State of New York, and doing business under the firm name of Coffin & Stanton, the parties of the second part, witnesseth:

Whereas, the city of Santa Cruz desires to acquire a water-works system for said city,

And whereas, Coffin & Stanton desire to furnish such a water-work- system,

Now, therefore, for and in consideration of the sum of one dollar,

paid in hand this sixteenth day of September, 1889, to said city of Santa Cruz by said Coffin & Stanton, the receipt of which is hereby duly acknowledged, and other valuable considerations, the following contract has been entered into:

321 The said city of Santa Cruz agrees to grant to said Coffin & Stanton a franchise for the construction of water works in said city of Santa Cruz, and said Coffin & Stanton agree to construct, or to cause to be constructed, a water-works system which shall in every way be in conformity with the specifications of the engineer employed by said city, which report is hereby referred to and made a part hereof; the works to be constructed subject only to such modifications as may hereafter be mutually agreed upon, or are contained in the contract.

And said city of Santa Cruz agrees to purchase said water works when the same are completed, and to pay for the same the sum of three hundred and twenty thousand dollars, as hereinafter set forth;

And in order to carry out the foregoing provisions of this contract, said Coffin & Stanton shall have the privilege of assigning to whosoever they may elect, any or all of the rights herein granted.

And said Coffin & Stanton shall organize, or cause to be organized, a corporation entitled "City Water Company of Santa Cruz," to which corporation shall be assigned the franchise hereinbefore mentioned;

And said water company shall cause to be issued in due and legal form a first mortgage upon all its properties, rights, titles, and franchises, now owned or hereinafter to be acquired, for an amount not to exceed four hundred thousand dollars, said bonds to bear interest at a rate not to exceed six per cent., and to mature in not more than thirty years; and said bonds shall be dated as soon as practicable after the incorporation of said company;

And said water company shall issue to said Coffin & Stan-

322 ton at various times during the progress of the work of construction, a sufficient number of said first-mortgage bonds as shall be required to pay for the construction of said water works, said Coffin & Stanton agreeing to make all necessary cash advances.

It is understood, however, that said water company shall not at any time issue bonds in excess of three hundred and twenty thousand dollars, except as shall be hereinafter provided, to wit:

That in the event of any changes or additions to said water-works system, as described in said report herein referred to, and then said water company shall have the right to issue a sufficient number of said first-mortgage bonds at ninety cents on the dollar to pay for such changes and additions, and said water company shall also have the right to issue bonds at a price not below ninety cents on the dollar, to pay the interest on any of the outstanding bonds of said water company, except such outstanding bonds as are held in escrow hereinafter referred to.

And when said Coffin & Stanton shall have received all of said three hundred and twenty thousand dollars bonds, and when said water company shall have completed said water works, then said

Coffin & Stanton shall deposit with the American Loan and Trust Company of New York, or such other trustee as may be agreed upon by the parties hereunto, two hundred and seventy thousand dollars of said bonds, which shall be held in trust by said trust company to secure a like amount, viz: two hundred and seventy thousand dollars five per cent. bonds of said city of Santa Cruz, which said city has heretofore sold to said Coffin & Stanton.

323 And the deed of trust or escrow under which said water company bonds shall be deposited shall provide that, when any of the annual installments of said city of Santa Cruz five per cent. bonds shall be paid by the city, the said trust company shall cancel a similar amount of the firs.-mortgage bonds, and continue so to do until all of said water company's bonds deposited with them are canceled.

And if said city of Santa Cruz shall default in the payment of the principal, or any of the installments thereof, or any of the interest coupons of said city five per cent. bonds, and shall continue in such default for a period of six months, then said trust company shall be authorized to deliver said first-mortgage water company bonds to the holder of said five per cent. city bonds, and provisions to this effect shall be contained in said deed of trust or escrow.

And when said water company shall have fully completed said water works, then said water company shall convey absolutely to said city of Santa Cruz, all its property, rights, titles and franchises, to have and to hold forever, subject only to the mortgage and to the deed of trust or escrow hereinbefore mentioned.

And said city of Santa Cruz agrees to set aside from the gross revenues derived from said water works, an amount sufficient to pay the interest on said first-mortgage bonds outstanding, except those held in escrow, and after five years an amount sufficient to form a sinking fund for the redemption of said outstanding bonds at maturity, except as — those so held in escrow.

And said water company shall commence operations of the
324 construction of said water works as soon as practicable, and shall have the whole completed within one year of such commencement, provided, however, that neither said water company or said Coffin & Stanton shall be held in any way responsible for delays, which are unavoidable or beyond their control, provided also that said city of Santa Cruz shall convey to said water company, clear and unencumbered rights to at least three-quarters of the riparian right to Laguna creek, the proposed source of supply for said water works, or at least three-quarters of such water.

Also a clear right of way throughout the entire system for the laying of all necessary pipes and mains; and also clear title to all lands necessary for reservoir sites, or to such other lands as may be found necessary for the effective operation of said water works, all of which said transfers of rights, or water rights of way and reservoir sites, shall be subject to the legal and equitable rights of said city to the performance of this contract, according to its meaning and intent.

And said water company shall not be called upon to begin work

until such properties shall have been conveyed to said water company, and until the right to the same shall have been examined and approved by the counsel of said water company.

And said Coffin & Stanton shall hold themselves personally and individually for any damage which may accrue to said city by the failure of said water company to construct said water works, and to convey property of said water company to said city of Santa Cruz, as hereinbefore set forth.

325 And said Coffin & Stanton do hereby guarantee performance of all the acts of said water company herein specified.

And it is hereby mutually agreed and made part of this contract that, in the event of the failure of said Coffin & Stanton, or said water company, to perform their part of this contract, then said city of Santa Cruz shall be entitled to collect from said Coffin & Stanton the sum of fifty thousand — as liquidated damages, which said sum actually represents the loss to said city of Santa Cruz by the failure of said Coffin & Stanton, or said water company, to perform their part of this contract.

And said city of Santa Cruz agrees to enter into any further contracts or agreements with said Coffin & Stanton, or said water company, which may be necessary effectually to carry out the spirit and intent of this contract.

In witness whereof the respective parties to these presents have hereunto set their hands and seals the day and year first hereinabove written.

CITY OF SANTA CRUZ,
By G. BOWMAN, *Mayor.*
COFFIN & STANTON.

[Seal of City of Santa Cruz.]

Attest: O. J. LINCOLN, *City Clerk.*'

And whereas, on the twenty-third day of December, 1889, the said Coffin & Stanton entered into a further agreement with the said city of Santa Cruz in the words and figures following:

'Memorandum of agreement in the matter of the sale of two
326 hundred and seventy dollars five per cent. bonds of the city of Santa Cruz, and in the matter of the purchase of water works by the said city of Santa Cruz.

Whereas, Coffin & Stanton have purchased two hundred and seventy thousand dollars five per cent. bonds of the city of Santa Cruz, and have entered into an agreement under date of the sixteenth day of September, 1889, with the city of Santa Cruz for the sale to said city of certain water works, named therein.

And whereas, it is desired that the proceeds of the sale of said bonds shall be used solely for the purpose of said works for the redemption of said bonds.

Now, therefore, it is agreed between said city of Santa Cruz and the said Coffin & Stanton, that said city shall deposit with said Coffin & Stanton the sum of two hundred and forty-five thousand

dollars of said proceeds, which sum shall be placed to the credit of said city of Santa Cruz on the books of said Coffin & Stanton for the use of City Water Company of Santa Cruz, referred to in said contract of September 16, said Coffin & Stanton agreeing to use said fund to carry out the contract hereinbefore mentioned, or, in event of the failure of said city to acquire said water works in accordance with said contract, then said fund shall be applied by said Coffin & Stanton to the retirement and redemption of the aforesaid mentioned two hundred and seventy thousand dollars five per cent. bonds of said city of Santa Cruz, and for the repayment to said city of any payments it may have made on said bonds; or said Coffin & Stanton and the individual members of said firm shall be personally liable for the full amount.

327 And it is hereby mutually agreed and made part of this contract that, in the event of the failure of said Coffin & Stanton to perform their part of this, then said city of Santa Cruz shall be entitled to collect the sum of three hundred thousand dollars as liquidated damages from the said firm of Coffin & Stanton, or from any or all of the individual members thereof, namely, William Edwin Coffin, Walter Stanton, Charles Hervey Jackson, and Charles F. Street, all of the city and county and State of New York. The aforesaid sum of three hundred thousand dollars actually representing loss of said city of Santa Cruz from the failure of said Coffin & Stanton to perform their part of this contract.

And it is further agreed that when the contracts for the construction of said water works are awarded, if they shall be awarded by said water company, that said Coffin & Stanton shall procure from said contractors good and sufficient bonds in amount of one hundred and fifty thousand dollars, which bonds shall be assigned and delivered to said city of Santa Cruz, as additional security for the fulfillment of this agreement, and of the contracts hereinbefore referred to.

In witness whereof, the respective parties to these presents have hereunto set their hands and seals this twenty-third day of September, 1889.

Signed, sealed and delivered in presence of—

C. BOWMAN, [SEAL.]
Mayor City of Santa Cruz.

O. J. LINCOLN,
[SEAL.] *City Clerk.*'

328 And whereas, in pursuance of such agreement, said Coffin & Stanton organized a corporation which was duly incorporated under the laws of the State of California, under the name of the City Water Company of Santa Cruz;

And the said city of Santa Cruz, on the twentieth day of November, 1889, granted, bargained, and sold unto the said City Water Company, its successors and assigns, all the right, title and interest of the said city of Santa Cruz in and to the waters of the Laguna creek, in the county of Santa Cruz, and all their riparian rights ap-

pertaining to the lands bordering on said Laguna creek, lying below the point of section 30, township 10, south, range 20 west, Mount Diablo meridian, where the water of said creek are to be taken and diverted for the purposes of the said City Water Company of Santa Cruz, and between said point of diversion and the Pacific ocean, that is to say, all such rights therein or thereto as the said city of Santa Cruz had at that time, or might thereafter acquire; and also all such easements and rights of way of every nature and description which had been acquired, or which may hereafter be acquired by the said city of Santa Cruz in connection therewith, and for the purpose of constructing and introducing the waters of said Laguna creek into the said city of Santa Cruz; and also all lands and reservoirs to be acquired by the said city of Santa Cruz in connection with and for the purpose of *constructing* said water into said city; also all rights of property of whatever kind or nature which the said city has, or may acquire, for said purpose or in connection therewith, together with all and singular the tenements, hereditaments and ap-
329 purtenances thereunto belonging or in anywise appertaining, or reversion and reversions, remainder and remainders, rents, issues and profits thereof; upon the distinct condition, however, expressed in said deed, that the agreement aforesaid be performed by said Coffin & Stanton and by the said City Water Company strictly in accordance with the terms thereof.

And whereas, the said City Water Company has executed its certain four hundred first-mortgage bonds, each of the denomination of one thousand dollars, and has deposited the same at the Holland Trust Company of New York, trustee, under the mortgage executed by said City Water Company to said trust company.

Now, therefore, know all men by these presents, that the said City Water Company of Santa Cruz has deposited and does hereby deposit said bonds with the said Holland Trust Company to be holden by said Holland Trust Company, and to be certified, issued, and delivered only in pursuance of the terms and conditions of the agreements and deed hereinbefore recited, it being distinctly understood and expressed that fifty of said bonds numbered from one to fifty be immediately certified and issued by said trustee, and delivered to Coffin & Stanton, bankers of New York, to whom the same have been sold; and that a resolution of the board of directors of the said City Water Company supported by the affidavit of its president and secretary, shall be deemed to be sufficient proof of the facts therein stated to authorize the issue of any or all of the remainder of said bonds for improvements, extensions, additions and repairs, and a notary's certificate of protest for non-payment of prin-
330 cipal or interest of the bonds of the city of Santa Cruz, shall be sufficient evidence to authorize the certification and issue of the two hundred and seventy bonds to be held until default in payment of such interest or principal occurs.

In witness whereof, the said City Water Company of Santa Cruz has caused these presents to be signed with its corporate seal by F. R. King, its president, and its corporate seal to be hereunto af-

fixed and attested by E. H. Rixford, its secretary, on the first day of May, 1890.

[SEAL.] CITY WATER CO., SANTA CRUZ,
By F. R. KING, *President.*

Attest: E. H. RIXFORD, *Secretary.*

STATE OF CALIFORNIA, }
City of and County of San Francisco, } *ss:*

On this fourteenth day of May, 1890, before me, Geo. T. Knox, a notary public in and for the city and county of San Francisco, duly commissioned and sworn, personally appeared F. R. King, known to me to be the president, and E. H. Rixford, known to me to be the secretary of the City Water Company of San Francisco, a corporation that executed the within instrument, and they duly acknowledged to me that said corporation executed the same.

And the said F. R. King and the said E. H. Rixford being by me duly sworn, did each depose and say that he, the said F. R. King, as the president of said City Water Company of Santa Cruz, and that he, the said E. H. Rixford, was the secretary for the same cor-
331 poration; that the seal affixed to the foregoing instrument was the corporation seal of said corporation; that it was affixed thereto by order of the board of directors of the said City Water Company; and that they signed their names thereto by the like order as the president and secretary respectively of said corporation.

"Witness my hand and official seal the day and year last above written.

"(Signed) GEO. T. KNOX,
"[SEAL.] *Notary Public.*

"(Endorsed:) Deed of escrow. City Water Company of Santa Cruz to Holland Trust Company."

Defendant then offered and read in evidence a deed purporting to have been executed by said City Water Company of Santa Cruz, and dated the twenty-ninth day of March, 1892, which said deed was marked "Defendant's Exhibit E," and reads as follows:

DEFENDANT'S EXHIBIT "E."

Deed by City Water Co. to City of Santa Cruz.

"Whereas, on the sixteenth day of September, 1889, the city of Santa Cruz, a municipal corporation existing under the laws of the State of California, entered into an agreement with William Edward Coffin, Walter Stanton, Charles Hervey Jackson, and Charles F. Street, doing business under the firm name of Coffin & Stanton, which agreement is in the following words, to wit:

"'Contract entered into this sixteenth day of September,
332 1889, for the purchase of water works, by and between the city of Santa Cruz, a municipal corporation, existing under

the laws of the State of California, party of the first part, and William Edward Coffin, Walter Stanton, Charles Hervey Jackson, and Charles F. Street, all of the city, county, and State of New York, and doing business under the firm name of Coffin & Stanton, the parties of the second part:

"'Witnesseth: Whereas, the city of Santa Cruz desires to acquire a water-works system for said city;

"'And, whereas, Coffin & Stanton desire to furnish such a water-works system;

"'Now, therefore, for and in consideration of the sum of one dollar paid in hand this sixteenth day of September, 1889, to said city of Santa Cruz, by said Coffin & Stanton, the receipt of which is hereby duly acknowledged, and other valuable considerations the following contract has been entered into:

"'The said city of Santa Cruz agrees to grant to said Coffin & Stanton a franchise for the construction of water works in said city of Santa Cruz, and said Coffin & Stanton agree to construct, or cause to be constructed, a water-works system, which shall in every way be in conformity with the specifications of the engineer employed by said city, which specifications are embodied in the report by said engineer, under date of July 30, 1889, which report is hereby referred to and made a part hereof: The works to be constructed subject only to such modifications as may hereafter be mutually agreed upon, or are contained in this contract. And said city of Santa Cruz agrees to purchase said water works when the same are completed, and to pay for the same the sum of three hundred and twenty thousand dollars, as hereinafter set forth;

333

"'And in order to carry out the foregoing provisions of this contract, said Coffin & Stanton shall have the privilege of assigning to whomsoever they may elect, any or all of the rights herein granted;

"'And said Coffin & Stanton shall organize, or cause to be organized, a corporation entitled, "City Water Company of Santa Cruz," which said corporation shall be assigned the franchise hereinbefore mentioned;

"'And said water company shall cause to be issued in due and legal form a first mortgage upon all its properties, rights, titles, and franchises now owned or hereafter to be acquired, for an amount not to exceed four hundred thousand dollars, said bonds to bear interest at a rate not to exceed six per cent, and to mature in not more than thirty years; and said bonds shall be dated as soon as practicable after the incorporation of said company;

"'And said water company shall issue to said Coffin & Stanton at various times during the progress of the work of construction a sufficient number of said first-mortgage bonds, as shall be required to pay for the construction of said water works, said Coffin & Stanton agreeing to make all necessary cash advances.

"'It is understood, however, that said water company shall not at any time issue bonds in excess of three hundred and twenty thousand dollars, except as shall be hereinafter provided, to wit:

"'That in the event of any changes or additions to said water-
334 works system, as described in said report herein referred to, and then said water company shall have the right to issue a sufficient number of said first-mortgage bonds at ninety cents on the dollar to pay for such changes and additions, and said water company shall also have the right to issue bonds at a price not below ninety cents on the dollar, to pay the interest or any of the outstanding bonds of said water company, except such outstanding bonds as are held in escrow, hereinafter referred to.

"'And when said Coffin & Stanton shall have received all of said three hundred and twenty thousand dollar bonds, and when said water company shall have completed said water works then said Coffin & Stanton shall deposit with the American Loan & Trust Company of New York, or such other trust company as may be agreed upon by the parties hereto, two hundred and seventy thousand dollars of said bonds, which shall be held in trust by said trust company, to secure a like amount, viz: Two hundred and seventy thousand dollars five per cent. bonds of said city of Santa Cruz, which said city has heretofore sold to said Coffin & Stanton, and the deed of trust or escrow under which said water company bonds shall be deposited, shall provide that when any of the annual installments of said city of Santa Cruz five per cent. bonds shall be paid by said city, then said trust company shall cancel a similar amount of the first-mortgage bonds, and continue so to do until — of said water company's bonds, deposited with them, are cancelled.

"'And, if said city of Santa Cruz shall default in the pay-
335 ment of the principal, or any of the installments thereof, or any of the interest coupons of said city five per cent. bonds, and shall continue in such default for a period of six months, then said trust company shall be authorized to deliver said first-mortgage water company bonds to the holders of said five per cent. city bonds, and provisions to this effect shall be contained in said deed of trust or escrow.

"'And when said water company shall have fully completed said water works, then said water company shall convey absolutely to said city of Santa Cruz, all its property, rights, titles, and franchises, to have and to hold forever subject only to the mortgage and to the deed of trust or escrow, hereinbefore mentioned.

"'And said city of Santa Cruz agrees to set aside from the gross revenue derived from said water works, an amount sufficient to pay the interest on said first mortgage bonds outstanding except those held in escrow, and after five years an amount sufficient to form a sinking fund for the redemption of said outstanding bonds at maturity, except as to those so held in escrow.

"'And said water company shall commence operations on the construction of said water works as soon as practicable, and shall have the whole completed within one year of such commencement, provided, however, that neither said water company or said Coffin & Stanton shall be held in any way responsible for delays which are unavoidable or beyond their control, provided also, that said city of Santa Cruz shall convey to said water company clear and unen-

cumbered rights to at least three-quarters of the riparian
336 rights to Laguna creek, the proposed source of supply for said water works, or to at least three-quarters of such water;

"'Also, a clear right of way throughout the entire system for the laying of all necessary pipes, or mains, and also clear title to all lands necessary for reservoir sites, or to such other lands as may be found necessary for the effective operation of said water works, all of which said transfers of rights, or water, rights of way, and reservoir sites, shall be subject to the legal and equitable rights of said city to the performance of this contract according to its true meaning and intent.

"'And said water company shall not be called upon to begin work until such properties shall have been conveyed to said water company, and until the title to the same shall have been examined and approved by the counsel of said water company.

"'And said Coffin & Stanton shall hold themselves personally and individually liable for any damages which may accrue to said city by the failure of said water company to construct said water works, and to convey the property of said water company to said city of Santa Cruz, as hereinbefore set forth.

"'And said Coffin & Stanton do hereby guarantee the performance of all the acts of said water company herein specified.

"'And it is hereby mutually agreed and made a part of this contract, that in the event of the failure of said Coffin & Stanton, or said water company, to perform their part of this contract, then said city of Santa Cruz shall be entitled to collect from said
337 Coffin & Stanton the sum of fifty thousand dollars as liquidated damages, which sum actually represents the loss to said city of Santa Cruz by the failure of said Coffin & Stanton, or said water company, to perform their part of this contract.

"'And said city of Santa Cruz agrees to enter into any further contracts or agreements with said Coffin & Stanton, or said water company, which may be necessary, effectually to carry out the spirit and intent of this contract.

"'In witness whereof, the respective parties to these presents have hereunto set their hands and seals the day and year first hereinabove written.

"'CITY OF SANTA CRUZ,
"'By G. BOWMAN, *Mayor.*

"'[Seal of the City of Santa Cruz.]

"'COFFIN & STANTON.

"'Attest: O. J. LINCOLN, *City Clerk.*'

"And, whereas, on the twenty-third day of September, 1889, said city of Santa Cruz entered into a further agreement with said Coffin & Stanton, which agreement is in the following words, to wit:

"'Memorandum of agreement, in the matter of the sale of two hundred and seventy thousand dollars, five per cent. bonds of the city of Santa Cruz, and in the matter of the purchase of water works by the said city of Santa Cruz.

"'Whereas, Coffin & Stanton have purchased two hundred
338 and seventy thousand dollars, five per cent. bonds of the city of Santa Cruz, and have entered into an agreement of date of the sixteenth day of September, 1889, with the city of Santa Cruz for the sale to said city of certain water works named therein.

"'And, whereas, it is desired that the proceeds of the sale of said bonds shall be used solely for the purpose of said works, or the redemption of said bonds:

"'Now, therefore, it is agreed between said city of Santa Cruz and the said Coffin & Stanton that said city shall deposit with said Coffin & Stanton the sum of two hundred and forty-five thousand dollars of said proceeds, which sum shall be placed to the credit of said city of Santa Cruz on the books of said Coffin & Stanton for the use of City Water Company of Santa Cruz referred to in said contract of September 16, said Coffin & Stanton agreeing to use said fund to carry out the contract hereinbefore mentioned; or, in the event of the failure of said city to acquire said water works in accordance with said contract, then said funds shall be applied by said Coffin & Stanton to the retirement and redemption of the aforesaid mentioned two hundred and seventy thousand dollars five per cent. bonds of said city of Santa Cruz, and for the repayment to said city of any payments it may have made on said bonds; or said Coffin & Stanton, and the individual members of said firm shall be personally liable for the full amount.

"'And it is hereby mutually agreed and made a part of this contract, that in the event of the failure of said Coffin & Stanton to perform their part of this, then said city of Santa Cruz shall be
339 entitled to collect the sum of three hundred thousand dollars, as liquidated damages from the said firm of Coffin & Stanton, or from any or all of the individual members thereof, namely, William Edward Coffin, Walter Stanton, Charles Hervey Jackson, and Charles F. Street, all of the city and county and State of New York.

"'The afore- sum of three hundred thousand dollars actually representing the loss to said city of Santa Cruz, from the failure of said Coffin & Stanton to perform their part of this contract.

"'And it is further agreed that when the contracts for the construction of said water works, if they shall be awarded by said water company, that said Coffin & Stanton shall secure from such contractor good and sufficient bonds in the amount of one hundred and fifty thousand dollars, which bonds shall be assigned and delivered to said city of Santa Cruz as additional security for the fulfillment of this agreement, and of the contracts hereinbefore referred to.

"'In witness whereof, the respective parties to these presents have

hereunto set their hands and seals, this twenty-third day of September, 1889.

"'G. BOWMAN, [SEAL.]
"'*Mayor City of Santa Cruz.*
"'COFFIN & STANTON. [SEAL.]

"'Signed, sealed and delivered in the presence of—
"'O. J. LINCOLN, *City Clerk.* [SEAL.]'

340 "And, whereas, in pursuance of said two agreements, this corporation was organized under the corporate name of 'City Water Company of Santa Cruz.'

"And, whereas, in pursuance of said two agreements, the said city of Santa Cruz did, by its deed dated the twentieth day of November, 1889, and recorded in the office of the county recorder of the city of Santa Cruz, State of California, in volume 71 of Deeds, at page 191, conveying to this corporation all its right, title and interest in and to the waters of Laguna creek, in said county of Santa Cruz, and all its right, title and interest in and to the riparian rights pertaining to the lands bordering on said Laguna creek, which it had then or might thereafter acquire, and also such easements and rights of way which it had then or might thereafter acquire in connection with and for the purpose of conducting and introducing the waters of said Laguna creek into said city of Santa Cruz; and also all lands and reservoir sites then acquired or to be acquired by it in connection with and for the purpose of the conducting of said water into said city, and also all rights and property of whatever kind or nature which it then had or owned, or which it might thereafter acquire for said purpose or in connection therewith.

"And, whereas, also in pursuance of said two agreements, said city of Santa Cruz did grant to said Coffin & Stanton, by ordinance No. 188 of its common council, a franchise and right of way to construct a system of water works mentioned in said agreements, all of which rights so granted to them were afterwards, by said Coffin & Stanton, assigned and transferred to this corporation;

341 "And, whereas, also in pursuance of said two agreements, this corporation had issued its bonds, four hundred in number, each for the sum of one thousand dollars, and numbered from one to four hundred, all bearing date the first day of May, 1890, and payable to the Holland Trust Company of New York, trustee, or bearer, on the first day of May, 1910, or at such times as its sinking fund shall be able to redeem said bonds, with interest at the rate of six per cent. per annum, payable semi-annually, on the first-days of May and November in each year, according to coupons attached thereto, and secure the payment of the principal and interest of said bonds, this corporation did execute and deliver to said Holland Trust Company of New York its certain mortgage or deed of trust, bearing date the first day of May, 1890, whereby it mortgaged and conveyed to said Holland Trust Company of New York, trustee, all its property for the purposes stated in said mortgage or deed of trust, which said mortgage or deed of trust now of record in the

office of the city recorder, and the record thereof is hereby referred to;

"And, whereas, said system of water works has been fully completed to the satisfaction of said city of Santa Cruz, and said water works have been accepted by it;

"Now, therefore, resolved, that this corporation, in pursuance of said two agreements, execute and deliver to said city of Santa Cruz a deed conveying it, all and singular, its entire property, including all rights, power, privileges, and franchises, which may have been granted or conferred upon it by the State of California and said city of Santa Cruz, or which may hereafter be so granted or con-
342 ferred, together with all the estate and property, real, personal and mixed, now owned, or which may hereafter be acquired by it, situate in the city of Santa Cruz or vicinity, and all erections and buildings, all machinery, engines, and reservoirs, pumps, wells, pipes, and other constructions, tools, implements and fixtures of every kind and nature, made, manufactured, constructed, built, laid, purchased or in any way acquired in or about the construction, maintenance and operation of said system of water works, in the State of California, aforesaid, and all the income, rents, profits, emoluments and moneys derived from said water works, including any sum or sums of money which may be paid by said city of Santa Cruz and the inhabitants thereof, under and by virtue of any contract with either of them, including any revenues from any other source whatsoever, or which may be payable to, or collectible by this corporation under the constitution and laws of the State of California, such conveyance to be made subject to said mortgage or deed of trust, and the obligations thereby imposed, the payment of which is to be assumed by said city of Santa Cruz;

"And F. R. King, the president, and E. H. Rixford, the secretary, are hereby authorized and directed to execute and deliver said deed and conveyance in the name of and under the seal of this corporation.

"I hereby certify that the foregoing is a true copy of a resolution adopted by the board of directors of the City Water Company of Santa Cruz, a corporation organized and existing under the laws of the State of California, having its office at the city and county of San Francisco, in said State, at a regular meeting of said
343 board, duly and regularly convened, and held at the office on the twenty-ninth day of March 1892.

"Witness my hand and the seal of said corporation this twenty-ninth day of March, 1892.

"[SEAL.] E. H. RIXFORD, *Secretary.*

"This indenture, made this twenty-ninth day of March, A. D. one thousand eight hundred and ninety-two (1892), between the City Water Company of Santa Cruz, a corporation organized and existing under the laws of the State of California, and having its office at the city and county of San Francisco, in said State, the party of the first part, and the City of Santa Cruz, a municipal corporation,

existing under the laws of the State of California, the party of the second part—

"Witnesseth: That, whereas, on the sixteenth day of September, 1889, said party of the second part entered into an agreement with said Coffin & Stanton, a copy of which is set out at full length in the resolution, a copy of which resolution is hereto attached, and on the twenty-third day of September, 1889, said party of the second part entered into another contract with said Coffin & Stanton, a copy of which is also set out at full length in said resolution;

"And, whereas, in pursuance of said two agreements, the party of the first part was organized under the name of 'City Water Company of Santa Cruz.'

"And, whereas, in pursuance of said two agreements the
344 party of the second part did by its deed dated the twentieth day of November, 1889, and recorded in the office of the county recorder of the county of Santa Cruz, State of California, in volume 71 of Deeds, at page 191, conveyed to the party of the first part all its right, title, and interest in and to the waters of Laguna creek in said county of Santa Cruz, and all its right, title, and interest in and to the riparian rights pertaining to the lands bordering on said Laguna creek, which it had then or might thereafter acquire, and also all such easements and rights of way which it then had or might thereafter acquire in connection with and for the purpose of conducting and introducing the waters of said Laguna creek into said city, of Santa Cruz, and also all lands and reservoir sites then acquired or to be acquired by it in connection with and for the purpose of conducting the said water into said city, and also all rights and property of whatsoever kind or nature which it then had or owned, or which it might thereafter acquire for said purpose, or in connection therewith;

"And whereas, also in pursuance of said two agreements, said party of the second part did grant to said Coffin & Stanton, by ordinance No. 188 of its common council a franchise and right of way to construct the system of water works mentioned in said agreements, all of which said rights so granted to them were afterwards by said Coffin & Stanton assigned and transferred to the party of the first part;

"And, whereas, also in pursuance of said two agreements, the party of the first part has issued its bonds, four hundred in number, each for the sum of one thousand dollars, and numbered
345 from one to four hundred, all bearing date the first day of May, 1890, and payable to the Holland Trust Company of New York, trustee, or bearer, on the first day of May, 1910, or at such times as its sinking fund shall be able to redeem said bonds with interest at the rate of six per cent. per annum, payable semi-annually on the first days of May and November in each year, according to coupons attached thereto, and to secure the payment of the principal and interest of said bonds, the party of the first part did execute and deliver to said Holland Trust Company of New York its certain mortgage or deed of trust bearing date the said first day of May, 1890, whereby it mortgaged and conveyed to said

Holland Trust Company of New York, trustees, all its property for the purposes stated in said mortgage or deed of trust, which said mortgage or deed of trust is now of record in the office of said county recorder, and the record thereof is hereby referred to;

"And, whereas, the said system of water works has been fully completed to the satisfaction of the party of the second part, and said water works have been accepted by it:

"Now, therefore, the party of the first part, in consideration of the premises and of the sum of one dollar to it paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and does hereby grant, bargain, sell, and convey to the party of the second part, its successors and assigns, subject to the said mortgage or deed of trust, all and singular, the entire property of the party of the first part, including all rights, powers, privileges, and franchises, which have been granted or conferred upon it by the State of California and
346 said party of the first part, or which may hereafter be so granted or conferred, together with all estate and property, real, personal and mixed, now owned, or which may hereafter be acquired by it, situate in the city of Santa Cruz and vicinity, and all erections and buildings, all machinery, engines and reservoirs, pumps, wells, pipes, and other constructions, tools, implements and fixtures of every kind and nature, made, manufactured, constructed, built, laid, purchased, or in any way acquired in or about the construction, maintenance and operation of said system of water works in the State of California aforesaid, and all the income, rents, profits and emoluments, and moneys derived from said water works, including any sum or sums of money which may be paid by said party of the second part, and the inhabitants thereof, under and by virtue of any contract with either of them, including any revenues from any other source whatsoever, or which may be payable to or collectible by the party of the first part under the constitution and laws of the State of California.

"To have and to hold the same and every part thereof unto the said party of second part, its successors and assigns, subject, however, to said mortgage or deed of trust, and all the obligations thereby imposed, which bonds, mortgage or deed of trust, and obligations, the party of the second part agrees to pay and perform.

"In witness whereof, the party of the first part has caused these presents to be executed by its president and secretary under
347 its corporate seal, the day and year first above written, in accordance with a resolution of its board of directors, a copy of which is hereto attached.

"CITY WATER COMPANY OF SANTA CRUZ.

"By F. R. KING, *President, and*

"[SEAL.] "E. H. RIXFORD, *Secretary.*

"Signed, sealed, and delivered in the presence of—

"THOS. E. HAVEN.

"STATE OF CALIFORNIA, } ss:
"*City and County of San Francisco,* }

"On the first day of April, in the year one thousand eight hundred and ninety-two (1892), before me, Thomas E. Haven, a notary public in and for the city and county of San Francisco, State of California, residing therein, duly commissioned and qualified, personally appeared F. R. King (president), and E. H. Rixford (secretary), known to me to be the president and secretary respectively of the 'City Water Company of Santa Cruz,' the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

"In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in said city and county of San Francisco, the day and year in this certificate first above written.

"THOS. E. HAVEN,

"*Notary Public in and for the City and County*
"[NOTARIAL SEAL.] *of San Francisco, State of California.*

348 "(Endorsed:) Deed. City Water Company of Santa Cruz to the City of Santa Cruz. Dated March 29, 1892. Filed for record at the request of O. J. Lincoln, March 6, A. D. 1894, at 5 o'clock p. m., and recorded in vol. 97 of Deeds, page 234, March 20, 1894, Santa Cruz county records. Ed. Martin, county recorder, by N. L., deputy recorder."

Defendant then offered and read in evidence a deed from the City of Santa Cruz to the City Water Company of Santa Cruz, purporting to have been executed on the twentieth day of November, 1889, which deed was marked "Defendant's Exhibit H," and reads as follows:

DEFENDANT'S EXHIBIT "H."

Indenture—City of Santa Cruz and City Water Co.

"This indenture, made the twentieth day of November, A. D. eighteen hundred and eighty-nine, between the City of Santa Cruz, a municipal corporation, existing under the laws of the State of California, the party of the first part, and the City Water Company of Santa Cruz, a corporation organized and existing under the laws of said State, and having its office and principal place of business at the city and county of San Francisco, in said State, party of the second part, witnesseth:

"Whereas, on the sixteenth day of September, 1889, said party of the first part entered into an agreement with William Edward Coffin, Walter Stanton, Charles Hervey Jackson, and Charles F. Street, doing business under the firm name of Coffin & Stanton, which agreement is in the following words, to wit:

349 "'Contract entered into this sixteenth day of September, 1889, for the purchase of water works, by and between the City of Santa Cruz, a municipal corporation existing under

the laws of the State of California, party of the first part, and William Edward Coffin, Walter Stanton, Charles Hervey Jackson and Charles F. Street, all of the city and county and State of New York, and doing business under the firm name of Coffin & Stanton, the parties of the second part, witnesseth:

"'" Whereas, the City of Santa Cruz desires to acquire a water-works system for said city; and

"'" Whereas, Coffin & Stanton desire to furnish such a water-works system;

"'" Now, therefore, for and in consideration of the sum of one dollar paid in hand this sixteenth day of September, 1889, to said City of Santa Cruz, by said Coffin & Stanton, the receipt of which is hereby duly acknowledged, and other valuable considerations, the following contract has been entered into:

"'" The said City of Santa Cruz agrees to grant to said Coffin and Stanton a franchise for the construction of water works in said city of Santa Cruz, and said Coffin & Stanton agree to construct or cause to be constructed a water works system, which shall in every way be in conformity with the specifications of the engineer employed by said city, which specifications are embodied in the report by said engineer, under date of July 13, 1889; which report is hereby referred to and made a part hereof; the works to be constructed subject only to such modifications as may hereafter be mutually
350 agreed upon or are contained in this contract. And said City of Santa Cruz agrees to purchase said water works when the same are completed, and to pay for the same the sum of three hundred and twenty thousand dollars, as hereinafter set forth. And in order to carry out the foregoing provisions of this contract, said Coffin & Stanton shall have the privilege of assigning to whomsoever they may elect, any or all of the rights herein granted; and said Coffin & Stanton shall organize, or cause to be organized, a corporation entitled "City Water Company of Santa Cruz," to which corporation shall be assigned the franchise hereinbefore mentioned; and said water company shall cause to be issued in due and legal form, a first mortgage upon all its properties, rights, titles, and franchise, now owned or hereinafter to be acquired for an amount not to exceed four hundred thousand dollars, said bonds to bear interest at a rate not to exceed six per cent., and to mature in not more than thirty years; and said bonds shall be dated as soon as practicable after the incorporation of said company.

"'" And said water company shall issue to said Coffin & Stanton at various times during the progress of the work of construction a sufficient number of said first-mortgage bonds as shall be required to pay for the construction of said water works, said Coffin and Stanton agreeing to make all necessary cash advances.

"'" It is understood, however, that said water company shall not at any time issue bonds in excess of three hundred and twenty thou-
dollars, except as shall be hereinafter provided, to wit: that
351 in the event of any change or addition to said water-works system, as described in said report herein referred to, then said water company shall have the right to issue a sufficient num-

ber of said first-mortgage bonds at ninety cents on the dollar, to pay for such changes and additions, and said water company shall also have the right to issue bonds at the price not below ninety cents on the dollar, to pay the interest on any of the outstanding bonds of said water company, except such outstanding bonds as are held in escrow, hereinafter referred to. And when said Coffin & Stanton shall have received all said three hundred and twenty thousand dollar bonds, and when said water company shall have completed said water works, then said Coffin & Stanton shall deposit with the American Loan & Trust Company of New York, or such other trust company as may be agreed upon by the parties hereto, two hundred and seventy thousand dollars of said bonds, which shall be held in trust by said trust company, to secure a like amount, viz: two hundred and seventy thousand dollars, five per cent. bonds of said city of Santa Cruz, which said city has heretofore sold to said Coffin & Stanton. And the deed of trust or escrow under which said water company bonds shall be deposited, shall provide that when any of the annual installments of said city of Santa Cruz five per cent. bonds shall be paid by said city, then said trust company shall cancel a similar amount of the first-mortgage bonds, and continue so to do until all said water company's bonds deposited with them are cancelled. And if said City of Santa Cruz shall default in the payment of the principal, or any of the installments thereof, or
352 any of the interest coupons of said city five per cent. bonds, and shall continue in such default for the period of six months, then said trust company shall be authorized to deliver said first-mortgage water company bonds to the holder of said five per cent. city bonds, and provisions to this effect shall be contained in said deed of trust or escrow. And when said water company shall have fully completed said water works, then said water company shall convey absolutely to said City of Santa Cruz all its property, rights, titles, and franchises, to have and to hold forever, subject only to the mortgage and to the deed of trust or escrow hereinbefore mentioned. And said City of Santa Cruz agrees to set aside from the gross revenue derived from said water works, an amount sufficient to pay the interest upon the first-mortgage bonds outstanding, except those held in escrow, and after five years an amount sufficient to form a sinking fund for the redemption of said outstanding bonds at maturity, except *as* those so held in escrow. And said water company shall commence operations on the construction of said water works as soon as practicable, and shall have the whole completed within one year of such commencement, provided, however, that neither said water company nor said Coffin & Stanton shall be held in any way responsible for delays which are unavoidable or beyond their control, provided, also, that said City of Santa Cruz shall convey to said water company clear and unincumbered rights to at least three-quarters of the riparian rights to Laguna creek, the proposed source of supply for said water works, or to at least three-quarters of such water; also, a clear right of way throughout the entire system for the laying of all necessary pipes, or mains,
353 and also clear title to all lands necessary for reservoir sites, or such other lands as may be found necessary for the effective

operation of said water works, all of which said transfers of rights or water, rights of way and reservoir sites shall be subject to the legal and equitable right of said city to the performance of this contract according to its true meaning and intent.

"'"'And said water company shall not be called upon to begin work until such properties shall have been conveyed to said water company, and until the title to the same shall have been examined and approved by the counsel of said water company. And said Coffin and Stanton shall hold themselves, personally and individually, liable for any damage which may accrue to said city by the failure of said water company to construct said water works and to convey the property of said water company to said City of Santa Cruz as hereinafter set forth. And said Coffin & Stanton do hereby guarantee the performance of all the acts of said water company herein specified. And it is hereby mutually agreed and made a part of this contract, that in the event of the failure of said Coffin & Stanton, or said water company, to perform their part of this contract, then said City of Santa Cruz shall be entitled to collect from said Coffin & Stanton the sum of fifty thousand dollars as liquidated damages, which sum actually represents the loss to said City of Santa Cruz, by the failure of said Coffin & Stanton, or said water company to perform their part of this contract. And said City of Santa Cruz agrees to enter into any further contracts or agreements with said Coffin & Stanton, or said water com-
354 pany, which may be necessary, effectually to carry out the spirit and intent of this contract.

"'"'In witness whereof, the respective parties to these presents have hereunto set their hands and seals, the day and year first hereinabove written.

"'"'CITY OF SANTA CRUZ,

"'"'By G. BOWMAN, *Mayor.*

"'"'[Seal of City of Santa Cruz.]

"'"'Attest: O. J. LINCOLN, *City Clerk.*'"'

"And, whereas, on the twenty-third day of September, 1889, said party of the first part entered into a further agreement with said Coffin & Stanton, which agreement is in the following words, to wit:

"'Memorandum of agreement in the matter of the sale of two hundred and seventy thousand dollars five per cent. bonds of the city of Santa Cruz, and in the matter of the purchase of water works by the said City of Santa Cruz.

"'Whereas, Coffin & Stanton have purchased two hundred and seventy thousand dollars five per cent. bonds of the city of Santa Cruz, and have entered into an agreement, under date of the sixteenth day of September, 1889, with the city of Santa Cruz, for the sale to said city of certain water works named therein. And whereas, it is desired that the proceeds of the sale of said bonds shall be used solely for the purpose of said works or the redemption of said bonds:

355 "'Now, therefore, it is agreed between the City of Santa Cruz and the said Coffin & Stanton that said city shall deposit with said Coffin & Stanton the sum of two hundred and forty-five thousand dollars of said proceeds, which sum shall be placed to the credit of said City of Santa Cruz on the books of said Coffin & Stanton, for the use of City Water Company of Santa Cruz, referred to in said contract of September 16, said Coffin & Stanton agreeing to use said fund to carry out the contract hereinbefore mentioned, or, in the event of the failure of said city to acquire said water works in accordance with said contract, then said fund shall be applied by said Coffin & Stanton to the retirement and redemption of the aforesaid mentioned two hundred and seventy thousand dollars five per cent. bonds of said city of Santa Cruz, and for the repayment to said city of any payments it may have made on said bonds; or said Coffin & Stanton and the individual members of said firm shall be personally liable for the full amount.

"'And it is hereby mutually agreed and made a part of this contract, that in the event of the failure of said Coffin & Stanton to perform their part of this, then said City of Santa Cruz shall be entitled to collect the sum of three hundred thousand dollars, as liquidated damages from the said firm of Coffin & Stanton or from any or all of the individual members thereof, namely, William Edward Coffin, Walter Stanton, Charles Hervey Jackson and Charles F. Street, all of the city and county and State of New York.

"'The aforesaid sum of three hundred thousand dollars
356 actually representing the loss to said City of Santa Cruz, from the failure of said Coffin & Stanton to perform their part of this contract. And it is further agreed that when the contracts for the construction of said water works are awarded, if they shall be awarded by said water company, that said Coffin & Stanton shall secure from such contractors good and sufficient bonds in amount of one hundred and fifty thousand dollars, which bonds shall be assigned and delivered to said City of Santa Cruz as additional security for the fulfillment of this agreement and of the contracts hereinbefore referred to.

"'In witness whereof, the respective parties to these presents have hereunto set their hands and seals this twenty-third day of September, 1889.

"'G. BOWMAN, [SEAL.]
"'*Mayor City of Santa Cruz.*
"'COFFIN & STANTON. [SEAL.]

"'Signed, sealed and delivered in the presence of—
"'[SEAL.] O. J. LINCOLN, *City Clerk.*'

"And, whereas, in pursuance of said two agreements, said party of the second part was organized under the corporate name of 'City Water Company of Santa Cruz:'

"Now, therefore, said party of the first part, for and in consideration of the premises, and of one dollar to it in hand paid by the party of the second part, does hereby grant, bargain, sell unto the said party of the second part, its successors or assigns, all the right,

title and interest of the party of the first part in and to the
357 waters of Laguna creek, in the county of Santa Cruz, State of California, and all the riparian rights pertaining to the lands bordering on said Laguna creek lying below the point in section 30, township 10, south range 2 west, Mount Diablo meridian, where the waters of said creek are to be taken and diverted for the purposes of the said City Water Company of Santa Cruz, and between said point of diversion and the Pacific ocean, that is to say, all such rights therein and thereto as the said party of the first part now has or may hereafter acquire. Also such easements and rights of way of every nature and description which have — acquired or which may hereafter be acquired by the party of the first part in connection with and for the purpose of conducting and introducing the waters of said Laguna creek into the said city of Santa Cruz. And also all lands and reservoir sites acquired or to be acquired by the party of the first part in connection with and for the purpose of the conducting of said water into said city, and also all rights and property of whatsoever kind or nature which the party of the first part now has or owns or which it may hereafter acquire for said purposes or in connection therewith.

"Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

"To have and to hold the said premises, together with the appurtenances unto the said party of the second part, its successors and assigns forever. Provided, however, and this grant is upon the expressed condition, that the said agreements hereinbefore set
358 forth are performed by said Coffin & Stanton and by said City Water Company strictly in accordance with the terms of said agreements; and in case of a violation of said agreements, or either of them by said Coffin and Stanton, or their assigns, or by said City Water Company, or its successors or assigns, then this grant shall be void and the property hereby conveyed shall revert to and revest in said party of the first part, its successors or assigns; and it is further provided that the payment or collection by suit or otherwise of the sums named in said agreements as liquidated damages, shall not in any manner affect or prevent such reverter and reversement nor validate this grant.

"In witness whereof, the party of the first part has caused these presents to be executed by its mayor under its corporate seal, the day and year first above written, by authority of an ordinance of its common council passed November 20, 1889.

"THE CITY OF SANTA CRUZ,
"By G. BOWMAN, *Mayor.*

"Signed, sealed and delivered in the presence of—
"Attest: O. J. LINCOLN.
"[CORPORATE SEAL.]

"Approved:
"W. D. STOREY,
"*City Attorney.*"

STATE OF CALIFORNIA, } ss:
City of Santa Cruz, }

On this twentieth day of November, A. D. 1899, before me, Ed. Martin, county clerk and *ex officio* clerk of the superior court
339 in and for said county, personally appeared G. Bowman, known to me to be the mayor of the City of Santa Cruz, the corporation that executed the annexed instrument, and he acknowledged to me that such corporation executed the same.

Witness my hand and official seal at said county the day and year last above written.

ED. MARTIN,
County Clerk and ex Officio Clerk of the Superior
[SEAL.] *Court in and for said County — Santa Cruz.*

Filed for record at the request of W. D. Storey, November 21, A. D. 1889, at 10 o'clock a. m., and recorded November 29, 1889.

STATE OF CALIFORNIA, } ss:
County of Santa Cruz, }

I, Ed. Martin, county clerk of the said county of Santa Cruz, State of California, and *ex officio* county recorder in and for said county, do hereby certify that I have compared the foregoing copy with the original record of the deed from the City of Santa Cruz to City Water Company of Santa Cruz, dated November 20, 1889, and of record in the office of said county recorder in vol. 71 of Deeds, at page 191 *et seq.*, and that the same is a full, true and correct transcript of such original record and of the whole thereof.

Attest my hand and the seal of said county recorder hereto affixed this first day of November, A. D. 1897.

ED. MARTIN,
County Recorder,
[SEAL.] By B. R. MARTIN,
Deputy Recorder.

340 O. J. LINCOLN, a witness on behalf of the defendant, testified:

That he was city clerk of the city of Santa Cruz from February, 1889, until 1896; that he was clerk of the city council of said city at the time of the adoption of ordinance No. 315, purporting to be an ordinance providing for notice to be given of a special election in the city of Santa Cruz, to be held March 13, 1894, for certain purposes therein specified.

The defendant then offered and read in evidence ordinance No. 192 of the mayor and common council of the city of Santa Cruz, entered on page 96 of Ordinance Book 93 of the city of Santa Cruz, which reads as follows:

An ordinance authorizing a conveyance by the city to the City Water Company of Santa Cruz of all the water rights, rights of way, and reservoir sites belonging or to belong to the city, in connection with its proposed water-works system, and directing the mayor to execute the same.

The mayor and common council of the city of Santa Cruz, State of California, do ordain as follows:

SECTION 1.

That in conformity with the two agreements entered into between the City of Santa Cruz and Coffin & Stanton, one dated September 16, 1889, and the other dated September 23, 1889, the said City of Santa Cruz do convey to the City Water Company of Santa Cruz, a corporation organized and existing under the laws of the State of California, and having its office and principal place of busi-
361 ness at the city and county of San Francisco, in said State, all the right, title and interest of said City of Santa Cruz in and to the waters of Laguna creek, in the county of Santa Cruz, in said State, and all the riparian rights pertaining to the land bordering on said Laguna creek, that is to say, all such rights as the city now has, or hereafter may acquire, in connection with and for the purposes of its proposed system of water works:

Also, all such easements and rights of way of any nature and description which have been acquired, or which may hereafter be acquired, in connection with and for the purpose of such system of water works:

And also, all lands and reservoir sites acquired or to be acquired in connection with and for the purpose of such system of water works, and also all rights and property of whatsoever kind and nature which the city now has, or which it may hereafter acquire, for said purposes, or in connection therewith.

SECTION 2.

That the mayor of the city be, and he is hereby authorized and directed to execute and deliver a proper deed of the same, said deed to be approved by the city attorney.

SECTION 3.

This ordinance shall take effect immediately upon its passage and approval.

Passed this twentieth day of November, 1889, by the following vote: Ayes, Councilmen Finkeldey, Willey, and Garrett; absent, Councilman Weeks.

362 Approved by me this twentieth day of November, 1889.

G. BOWMAN,
Mayor of the City of Santa Cruz.

Attest: O. J. LINCOLN,
[SEAL.] *City Clerk.*

Filed November 20, 1889.

O. J. LINCOLN, *City Clerk.*

The witness (Mr. Lincoln) continuing, states that he delivered the bonds in question in this suit to Mr. Walter Stanton, of the firm of Coffin & Stanton, on the twenty-fourth day of November, 1894; that said bonds were three hundred and sixty in number, and of the denomination of $1,000 each; and that no money or other consideration was received by the witness for or on account of the City of Santa Cruz, either on the delivery of such bonds to Mr. Stanton, or before or after such delivery; that the witness has no knowledge of any consideration ever being paid *in* the City of Santa Cruz for said bonds.

The witness was then shown a record on page two hundred and twenty-six of the minutes of the common council of the city of Santa Cruz, vol. 3, and stated that the entry was made by him. The defendant then offered and read in evidence such record, the same being the record of the contract executed by Coffin & Stanton to the City of Santa Cruz, which reads as follows:

"Upon motion, it was ordered, that the contract of Coffin & Stanton to refund the city's indebtedness, dated February 27, 1894, and accepted by the council April 16, 1894, be entered upon the minutes of the board, namely:

363 'The City of Santa Cruz, deciding to refund $225,000 in 5 per cent. water bonds, $89,000 in 6 per cent. mortgage bonds, $39,000 municipal improvement bonds, with accrued interest thereon, total $360,000, into $360,000 in 5 per (cent.) refunding bonds of the denomination of $1,000 each, legally issued under the act of the legislature of the State of California, approved March 1, 1893, advertising the sale of same, and in the event of the city not receiving satisfactory bids for such bonds at said sale, Coffin & Stanton agree to purchase said bonds at par and accrued interest, contracting with the city to assume all obligations of interest and principal on the bonds to be refunded, making the refunding an assured fact from the date of the sale and delivery of the bonds to them. The funds derived from the purchase of $360,000 in said bonds to be deposited with Coffin & Stanton to the credit of the City of Santa Cruz funding fund, and to be used to take up and refund the outstanding bonds as above mentioned, Coffin & Stanton forwarding same from time to time to the city for cancellation, charging such bonds to the funding fund at par (100) with interest to April 16 only. Coffin & Stanton also agree to surrender and deliver to the city all bonds of the City'"—"*to the city all bonds of the City* Water Company outstanding, over and above the $89,000 above mentioned, and to surrender and assign to and release said city from all claims and demands against said City of Santa Cruz under their contract with said city for construction of water works. In consideration of the above agreement, the city on its part agrees to pay Coffin & Stanton 3 per cent. of the par value of the refund-

ing bonds in the event of the city availing itself of its terms
364 on or before April 16, 1894. Coffin & Stanton further agree to prepare and furnish said city with the blank bonds and coupons thereto, at their own cost and expense.

Dated at Santa Cruz, February 27, 1894.

COFFIN & STANTON.

Witness to signature:
Z. N. GOLSBY.'"

W. E. A. JOHNSON, a witness called on behalf of defendant, testified as follows:

"I am deputy county clerk of the city and county of San Francisco, and recognize these papers now shown me. I brought them with me this morning from the files of the office of the county clerk of the city and county of San Francisco."

The defendant then offered and read in evidence one of the documents identified by the witness, the same being the articles of incorporation of the City Water Company of Santa Cruz, together with the record of filing, which said document was marked "Defendant's Exhibit F," and reads as follows:

DEFENDANT'S EXHIBIT "F."

Articles of Incorporation of the City Water Company of Santa Cruz.

Know all men by these presents: That we, the undersigned, a majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California.

And we hereby certify:

365 First. That the name of said corporation shall be the City Water Company of Santa Cruz.

Second. That the purposes for which it is formed are:

To furnish, supply and sell water to the city of Santa Cruz, county of Santa Cruz, State of California, and the inhabitants thereof, to the county of Santa Cruz, in said State and inhabitants thereof, for all such uses and purposes as may be required by said city of Santa Cruz, and by said county of Santa Cruz, and by the inhabitants thereof respectively, to purchase, condemn, acquire and own water works, water, water rights, rights of way, easements, lands, tenements and hereditaments; to erect, construct, equip, lay down, maintain and own water works, buildings, reservoirs, water pipes, pipe lines, canals, ditches, flumes, conduits, roads, ways, bridges, telegraph and telephone lines; to enter into, make, receive, acquire and own contracts, agreements, franchises and privileges in relation to the supplying, furnishing and selling of water; to contract for the construction and equipment by said corporation of water works for others; also, to contract with others for the construction

and equipment of water works for said corporation; to contract, sell, and convey any and all of its water works, water rights, rights of way, easements, lands, tenements, hereditaments, buildings, reservoirs, water pipes, pipe lines, canals, ditches, flumes, conduits, roads, ways, bridges, telegraph and telephone lines; and to hypothecate, mortgage, pledge, and convey in trust the same or any part thereof, for the purpose of securing its bonds, promissory notes and obligations; to borrow money, and make, execute and deliver bonds, notes, mortgages, deeds of trust and obligations in
366 writing, for the purpose of securing the payment of moneys due, borrowed or owing by it, to buy, contract for and sell bonds, obligations, evidences of debt and securities; and to do and perform all the acts and things which may be necessary or convenient in carrying out the objects and purposes of this incorporation.

Third. That the place where the principal business of said corporation is to be transacted is the city and county of San Francisco, State of California.

Fourth. That the term for which said corporation is to exist is fifty years from and after the date of its incorporation.

Fifth. That the number of directors or trustees of said corporation shall be five, and that the names and residences of the directors or trustees who are appointed for the first year, and to serve until the election and qualification of such officers, are as follows, to wit:

Name.	Whose residence is at—
Charles B. Ludwig,	The city of New York, State of New York.
Charles Hervey Jackson,	The city of New York, State of New York.
Frederick R. King,	San Francisco, State of California.
E. H. Rixford,	San Francisco, State of California.
C. K. Bonestell,	San Francisco, State of California.

Sixth. That the amount of the capital stock of said corporation is five hundred thousand dollars, and the number of shares in which it is divided is five thousand, of the par value of one hundred dollars each.

367 Seventh. That the amount of said capital stock which has been actually subscribed is five hundred thousand dollars, and the following are the names of the persons by whom the same has been subscribed and the amount subscribed by each of them, to wit:

Names of subscribers.	No. of shares.	Amount.
Charles Hervey Jackson	1	$100.00
Charles B. Ludwig	4,996	499,600.00
Frederick R. King	1	100.00
E. H. Rixford	1	100.00
C. K. Bonestell	1	100.00

In witness whereof, we have hereunto set our hands and seals this twenty-sixth day of September, 1889.

CHARLES F. STREET. [SEAL.]
J. D. HALSEY. [SEAL.]
F. R. KING. [SEAL.]
E. H. RIXFORD. [SEAL.]
C. K. RONESTELL. [SEAL.]

Signed, sealed and delivered in the presence of—
—— ——.

CITY AND COUNTY OF SAN FRANCISCO, } ss:
State of California, }

On this twenty-seventh day of September, in the year one thousand eight hundred and eighty-nine, before me, Geo. C. Knox, notary public, duly commissioned and sworn, in and for said city and county, personally appeared Charles F. Street, Frederick R. King, E. H. Rixford, C. K. Bonestell, and James D. Halsey,
368 known to me to be the persons whose names are subscribed to and who executed the within instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.] GEO. C. KNOX,
Notary Public.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

I, Wm. A. Davies, county clerk of the city and county of San Francisco, State of California, do hereby certify the within to be a full, true and correct copy of articles of incorporation of the City Water Company of Santa Cruz, as the same remains on file in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal this — day of ——, 1888.

—— ——, *Clerk,*
By —— ——,
Deputy Clerk.

(Endorsed:) Filed in the office of the county clerk of the city and county of San Francisco, State of California, this twenty-eighth day of September, A. D. 1889. Wm. A. Davies, county clerk, by John J. Harney, deputy clerk.

The defendant then offered and read in evidence the certificate of creation of bonded indebtedness of the City Water Company
369 of Santa Cruz, being the other document identified by the witness, which said certificate is marked "Defendant's Exhibit G," and reads as follows:

DEFENDANT'S EXHIBIT "G."

Certificate of Creation of Bonded Indebtedness to City Water Company.

We, F. R. King, president of the corporation hereinafter named, and E. H. Rixford, secretary of said corporation, the chairman and secretary of the stockholders' meeting hereinafter mentioned, and F. R. King, C. K. Bonestell, and E. H. Rixford, a majority of the directors of said corporation, do hereby certify as follows:

That at a regular meeting of the board of directors of the City Water Company of Santa Cruz, a corporation organized and existing under the laws of the State of California, and having its office and place of business at the city and county of San Francisco, in said State, duly and regularly convened and held at its office, room 8, No. 528 California street, in said city and county, on the thirty-first day of December, 1889, a resolution of which the following is a copy, was duly and regularly passed and adopted:

Resolved, That a meeting of the stockholders of this corporation be, and the same is hereby, called for the twenty-first day of April, 1890, at 11 o'clock a. m., at the office of the corporation, to consider the expediency of and vote upon the question of creating a bonded indebtedness of the corporation and issuing bonds of the corporation secured by mortgage, in the sum of $400,000, with interest at the rate of six per cent. per annum to pay for the construc-
370 tion and maintenance of the works of the corporation and the "Daily Evening Bulletin," a newspaper published in the city and county of San Francisco, State of California, is hereby designated as the newspaper in which shall be published the notice of such meeting."

That in pursuance of such resolution —, of which the following is a copy, was published in the "Daily Evening Bulletin," the newspaper mentioned in said resolution, once a week for more than sixty days, to wit, every Tuesday from and including the fourth day of February, 1890, to and including the fifteenth day of April, 1890:

City Water Company of Santa Cruz.

Location of principal place of business, city and county of San Francisco, State of California.

Notice is hereby given that a meeting of the stockholders of the City Water Company of Santa Cruz, a corporation, will be held at the office of the company, room 8, No. 528 California street, San Francisco, State of California, on the twenty-first day of April, 1890, at 11 o'clock a. m., for the purpose of considering the expediency of and of voting upon the question of creating a bonded indebtedness of the corporation and of issuing bonds of the corporation, secured by mortgage, in the sum of four hundred thousand dollars, bearing interest at the rate of six per cent. per annum, to pay for the construction and maintenance of the works of the corporation.

By order of the board of directors.

F. R. KING, *President.*
E. H. RIXFORD, *Secretary.*

371 That in addition to such notice by publication, the undersignedsecretary of such corporation did also address a copy of said notice to each of the stockholders of said corporation at his place of residence, and mailed the same to him, postage paid, on the sixth day of February, 1890.

That a meeting of the stockholders of said corporation was duly and regularly held at the said office of said corporation on the twenty-first day of April, 1890, at 11 o'clock a. m., in pursuance of said call and notice; that at such meeting a bonded indebtedness of four hundred thousand dollars was created, as appears from the following resolution of said stockholders; that at such meeting all the stock of the corporation, to wit, five thousand shares, was represented by the holders in person and by proxies in writing, and that at such meeting a resolution, of which the following is a copy, was duly and regularly adopted by a vote of the holders of all of the capital stock of said corporation, to wit:

Charles Hervey Jackson, holding..... ...	1 share.
(By written proxy to E. H. Rixford.)	
Charles B. Ludwig, holding....	2,996 shares.
(By written proxy to E. H. Rixford.)	
Frederick R. King.....	1 share.
E. H. Rixford.....	1 share.
C. K. Bonestell.....	1 share.
	5,000 shares.

And that all of said stockholders voted for said resolution, which is as follows:

First. Resolved, That for the purpose of procuring means to
372 construct, maintain, extend, and complete the water works of the company, and to pay all its indebtedness, et cetera, it is expedient and necessary for this company to borrow the sum of four hundred thousand dollars and to issue its bonds therefor, and to secure the payment of the same as authorized by law.

Second. Resolved, That the president be, and he is hereby, authorized to negotiate such loan, and for that purpose to make and execute a series of bonds of the company, four hundred in number, and each for the sum of one thousand dollars, and numbered from one to four hundred, all bearing date the first day of May, A. D. 1890, and payable to the Holland Trust Company of New York, trustee, or bearer, on the first day of May, A. D. 1910, or at such times as its sinking fund hereafter to be established shall be able to redeem said bonds, said bonds to be redeemed at par according to number, beginning at the lowest, with interest from this date at the rate of six per cent. per annum, payable semi-annually on the first days of May and November in each year, according to coupons to be attached thereto, both principal and interest to be payable in the city of New York in gold coin of the United States of the present standard of weight and fineness, and also to secure the pay-

ment of said bonds and the interest thereon by a pledge of the property and income of this company.

Third. Resolved, That the said bonds shall be substantially in the form following, to wit:

373 No. —. $1,000.

UNITED STATES OF AMERICA, *State of California.*

The City Water Company of Santa Cruz Six per Cent. First-mortgage Gold Bond.

Total issue, $400,000.

The City Water Company of Santa Cruz, a corporation of the State of California hereby acknowledges itself to owe to the Holland Trust Company, of New York, trustee, or bearer, one thousand dollars, which it promises to pay to the bearer hereof at the office of said The Holland Trust Company of New York, in the city of New York, in lawful gold coin of the United States of America, of the present standard of weight and fineness, on the first day of May, in the year one thousand nine hundred and ten, except as hereinafter provided, with interest thereon from and after the date hereof, at the rate of six per centum per annum, payable in like gold coin, semi-annually, at the office of said The Holland Trust Company, on the first days of May and November in each year, upon the surrender of annexed coupons therefor, until the principal sum shall be fully paid.

This is one of a series of four hundred bonds issued by this company, numbered one to four hundred, inclusive, each of which is for the sum of one thousand dollars, all bearing the same date with this bond, and in all respects of the same tenor and effect, and the payment of which both principal and interest, is secured by the mortgage of said company to said The Holland Trust Company,

of New York, trustee, of even date herewith, on all the real
374 property, machinery, engines, houses, pumps, wells, reservoirs, stand pipes, mains, and water-plant fixtures of said company, and on all its equipment and other property, real and personal, connected with or appurtenant to said water works, or used or provided for the operation and maintenance thereof, now owned or hereafter acquired, together with all the rights and franchises of said company thereunto appertaining, and said bonds are subject to the provisions of said mortgage executed and delivered to said The Holland Trust Company, of New York, and recorded, to which reference is made for the provisions thereof and the full conditions hereof. Said bonds may be redeemed whenever the sinking fund is sufficient therefor, at par, according to numbers of said bonds, beginning with the lowest number.

Upon default in the payment of any installment of interest of this bond for sixty days after such installment shall become due and payable, the principal hereof shall thereupon become due and payable, upon the condition and in the manner and with the effect as provided and set forth in the said mortgage or deed of trust.

It is agreed between the said City Water Company of Santa Cruz and the holder of this bond that, in case of default in the payment of the principal or interest thereof the said company will waive, and does hereby waive, the benefit of any extension, stay, redemption, or appraisement laws, now existing, or which may hereafter be enacted.

This bond shall not become obligatory until the certificate endorsed hereon is duly signed by the trustee.

375 In witness whereof the said The City Water Company of Santa Cruz has caused its corporate seal to be hereunto affixed, and this bond to be subscribed and attested by its president and secretary on this first day of May, in the year eighteen hundred and ninety.

CITY WATER COMPANY OF SANTA CRUZ,
By F. R. KING, *President.*

Attest: E. H. RIXFORD, *Secretary.* [SEAL.]

$30. *Form of Coupon.* $30.

On the first day of ——, the City Water Company, of Santa Cruz, will pay the bearer hereof thirty dollars, at the Holland Trust Company, of New York, in the city of New York, being six months' interest on the first-mortgage bond No. —.

F. R. KING, *President.*

E. H. RIXFORD, *Secretary.*

The interest coupons attached to all of said bonds shall be authenticated and evidenced by the signatures of the president and secretary of the company engraved thereon, which shall be regarded and treated as in all respects, in fact and in law, equivalent to a manual signing thereof.

Fourth. Resolved, That the pledge of the property and income of this company to secure the payment of said bonds and the interest thereon shall be in the form of a mortgage or deed of trust, and to that end this company will make, execute, and deliver to the

376 Holland Trust Company, of New York, trustee, a mortgage deed upon all and singular the franchises, rights of way, and privileges granted to said water works company, all the real estate, houses, pumps, machinery, reservoirs, stand pipes, hydrants, and all main and distributing pipes; also all buildings, plant, machinery, fixtures, and appurtenances and privileges for supplying the citizens of said city of Santa Cruz and the vicinity thereof with water, and all other property now owned or that may be hereafter acquired by said company, including all rents of hydrants and incomes from water rents, and all revenues or emoluments of said company derived from said water works, by such pertinent description in general and in detail as the president of this company may approve and have incorporated in said mortgage.

Such mortgage, when recorded, shall be a lien upon all the property of this company, including all rights, privileges, franchises,

tolls, income, rights of way, leases, grants, liens, equipment, and all the other property, real and personal, of said company, now owned or which may hereafter be acquired, as fully as the same may be set forth therein, and shall be in trust for the equal benefit and security of the holders of said bonds, without preference, priority, or distinction as to lien or otherwise, so that each of them shall have the same rights, lien, privilege, and security, as though they had all been executed, issued, and delivered simultaneously with the execution and delivery of this mortgage, and said mortgage shall provide that a sinking fund to redeem said bonds shall be established by this company after five years from the date of said mortgage,
377 by paying annually to the said Holland Trust Company of New York, as trustee, two per centum of the amount of bonds secured by said mortgage; and if all of said bonds be not issued at said time, then two per centum of the amount then outstanding, and such mortgage may also contain such other terms, provisions, restrictions, and limitations as the president of this company may approve and have incorporated therein.

Fifth. Resolved, That none of said bonds shall be issued, or be entitled to the benefit of the security of said mortgage, or be in anywise obligatory upon this company as evidence of debt or otherwise, unless or until the said Holland Trust Company of New York, as such trustee, or its successor or successors in such trust, shall have authenticated the same as being so issued and secured by signing a certificate endorsed thereon substantially in the form following, to wit:

"The Holland Trust Company, of New York, hereby certifies that this bond is one of a series of bonds amounting in the aggregate to four hundred thousand dollars, mentioned in the mortgage referred to within.

HOLLAND TRUST COMPANY OF NEW YORK, *Trustee.*

(Signed) ——— ———, *President.*"

Sixth. Resolved, That the president and secretary be and they are hereby authorized and empowered, for and on behalf of this company, to execute each of said bonds by affixing thereto its name and corporate seal, attested by the secretary, and by signing the
378 same as such president, and, when so executed, to deliver the same to said trustee for authentication as aforesaid; and also to make and execute the said mortgage or deed of trust under the corporate name of this company, subscribed by the president, with the corporate seal thereto attached, attested by the secretary, and to acknowledge the same as required by law, and when so acknowledged, the same shall be delivered to said trustee, and duly recorded.

That the undersigned, F. R. King, president of the corporation, was the chairman of said meeting, and the undersigned, E. H. Rixford, secretary of the corporation, was the secretery of said meeting, and that the undersigned directors are a majority of the directors of said corporation.

That at all the times in this certificate stated, F. R. King, C. K.

Bonestell, Chas. B. Ludwig, Chas. Hervey Jackson, and E. H. Rixford, were, and now are, the directors of said corporation.

In witness whereof, the said chairman and secretary of said stockholders' meeting, and the majority of the directors of said corporation, have hereunto signed their names and caused the seal of the corporation to be hereunto affixed, this first day of May, 1890.

F. R. KING,
President and Chairman.

[CORPORATE SEAL.]

E. H. RIXFORD, *Secretary.*
C. K. BONESTELL,
F. R. KING,
E. H. RIXFORD, *Directors.*

379 (Endorsed:) Certificate of creation of bonded indebtedness to the City Water Company of Santa Cruz. Filed in the office of the county clerk of the city and county of San Francisco, State of California, this twenty-fourth day of June, A. D. 1890. Wm. A. Davies, county clerk, by John H. Harney, deputy clerk.

O. J. LINCOLN, recalled on behalf of the defendant, testified as follows: That he advertised the refunding bonds here in question for sale after the adoption of what is known as ordinance No. 320 of the city of Santa Cruz, in the "Santa Cruz Surf," the "Santa Cruz Sentinel," and the "San Francisco Chronicle;" that no bids were received by the witness as city clerk, nor by the city for the refunding bonds after the first publication of the notice calling for bids, neither orally nor in writing; that he had in his possession, on the twenty-third of April, 1894, the instrument referred to in the minutes of April 16, 1894, as the proposition of Coffin & Stanton, dated February 22, 1894, to refund the city's indebtedness; that the record of said proposition or contract on pp. 226 and 227 of the Minutes of the Common Council of the City of Santa Cruz is in his handwriting.

The witness was then shown a document signed "Coffin & Stanton witness to signature, Z. N. Goldsby; dated at San Francisco, February 27, 1894," marked "Filed April 16, 1894, O. J. Lincoln, city clerk," and purported to be an agreement on behalf of Coffin & Stanton to purchase $360,000 worth of five per cent. refunding bonds of the denomination of $1,000 each to be issued by the city of Santa Cruz; and then stated that he had compared the first
380 page of the document shown him with the record that he made of the original contract, and that the same do not agree; that he recognized the last page and the file-mark of a document shown him as the last page and file-mark of the original proposition of Coffin & Stanton, referred to in the minutes; that the first page of a document shown him, purporting to be the original contract, does not correspond with the record; that the document so shown him is not the original contract or proposition referred to in the minutes as the proposition of Coffin & Stanton and recorded in the minutes; that during witness's incumbency of the office of city clerk, there was no other contract purporting to be the original contract or proposition of Coffin & Stanton among the files of the city

clerk; that the original proposition was filed as presented by Coffin & Stanton in February, 1894; and that witness presumed that it had remained on file ever since that time; that said original proposition was not in the possession of witness between the twenty-seventh of February, 1894, and the sixteenth of April, 1894, but that it was witness's recollection that it was in the hands of Mr. Goldsby, the city attorney; that it first came into witness's possession as city clerk of the city of Santa Cruz on the date of its filing, sixteenth of April, 1894, and was recorded on the twenty-fourth, the *day after the meeting of April 23, 1894; that so far as witness* knows, the said original contract remained in his custody as city clerk until he turned over the papers to his successor; that witness had no recollection of said original contract being taken out of the office at any time; that he had not delivered to nor authorized
381 any one to take the original contract from the files between the sixteenth day of April, 1894, and the time he went out of office; that during said period witness sent no original papers to Coffin & Stanton and that, so far as he was concerned, witness had no knowledge as to the change or the time of the change, or how the change was made, in the original contract. (The purported contract shown witness is now marked for identification, "W. B. B.")

It is now admitted by plaintiff that on the ninth of April, 1894, at an election duly held in the city of Santa Cruz, Robert Effey was elected mayor, Henry G. Insel, John Howard Bailey, John D. Maher, and Frank K. Roberts were elected councilmen of the city of Santa Cruz for the ensuing term, and that Mr. Bailey qualified on the twelfth of April, 1894, Mr. Maher on the thirteenth of April, 1894, and Mr. Roberts on the twelfth of April, 1894.

Mr. Lincoln then continued: "H. G. Insel took the oath of office on the sixteenth day of April, 1894, somewhere between 8 a. m. and 5 p. m. It was before 5 o'clock of the afternoon of that day. The oaths of office were all filed when executed before me." (The witness, O. J. Lincoln, was then temporarily withdrawn.)

ROBERT EFFEY, a witness on behalf of the defendant, testified as follows:

That he was elected mayor of the city of Santa Cruz at the charter election of 1894; that at that time he knew Mr. Walter Stanton, of the firm of Coffin & Stanton, of New York; that Mr. Coffin was in the city of Santa Cruz in the month of April, 1894; that he remembers the circumstance of Walter Stanton having in his pos-
382 session a refunding bond issue of 1894; that Walter Stanton left the city of Santa Cruz on the twenty-fourth or twenty-fifth day of April, 1894; that he saw Mr. Stanton in San Francisco in either April, June or July of 1894.

The witness is now shown the document purporting to be the agreement of Coffin & Stanton to purchase $270,000 refunding bonds of the city of Santa Cruz, and marked "filed April 16, 1894, O. J. Lincoln, city clerk," and stated that he had seen such document before; that he had the document in his possession after it was filed

on April 16, 1894; that he had it several times in the city clerk's office for the purpose of looking at it; and that he brought it up once to San Francisco to show Mr. Walter Stanton, at his request, at the time Mr. Walter Stanton was in San Francisco, in June 1894; that it was either June or April, but he thought it was June; that at the time, Mr. Stanton was at the Occidental hotel in San Francisco; that Mr. Stanton had the document in his possession a few hours—maybe over night; that witness was not with Mr. Stanton all the time that Mr. Stanton had the contract in his possession; that Mr. Stanton finally returned the document to the witness. Witness does not know, and did not know, whether it was in the same condition when it was returned to him as when he handed it to Mr. Stanton, but witness thought it was until lately; that he made no examination of it critically at the time to ascertain whether or not it was in the same condition; that he returned it to the city clerk when he got home again; that he had no knowledge at any time of a change being made in the original contract—the substitution of the first page.

383 On cross-examination the witness stated: I gave that contract to Mr. Walter Stanton after April 23, 1894. The name of H. E. McKinney & Son is printed on the two pages of the instrument I hold in my hand. I know them. They are searchers of records, and live at Santa Cruz. They have no office in San Francisco. During the time that document was in the possession of Mr. Stanton, he had no opportunity of having another page, a first page of the contract, drawn in the office of H. E. McKinney & Son on their stamped paper. The contract was not in his possession long enough for him to go from San Francisco to Santa Cruz, and neither Mr. McKinney nor his son was in San Francisco during that time, to my knowledge.

O. J. LINCOLN was then recalled and testified on behalf of defendant as follows:

That after the first of July, 1894, he made and forwarded to Coffin & Stanton several copies of the ordinances of the city of Santa Cruz, and some other papers; that he could not recall to mind whether said contract or proposition of Coffin & Stanton to purchase $270,000 bonds of the city of Santa Cruz was among such papers, but that possibly it was; that he received a letter from Coffin & Stanton asking for certified copies of certain papers. He could not remember whether the contract was included among them. That such letter had been lost, and that he had not been able to find it, and that he did not remember sending a certified copy of the record of the contract.

On cross-examination the witness testified: That when he copied the instrument then on file, purporting to be an offer from
384 Coffin & Stanton to the city into the record book, he could not recall whether he was alone or not; that at that time he had no assistance in copying documents; that he had sometimes made clerical mistakes in making copies; that there might have been some slight clerical errors made in copying the original con-

tract into the record; that the representations appearing in such record did not occur in the original contract; and that such representations were errors; that he had examined the document purporting to be the original contract or offer of Coffin & Stanton prior to his testimony in this case, with the idea of determining what the differences are.

The witness was then asked to compare the purported contract with the record made by him of the original contract, and to point out such sentences that he was positive were not in the paper that was transcribed by him in the record.

By Mr. THOMAS:

Q. In the record appears what *that* you desire to call the attention of the court to? Read aloud the words.

The WITNESS (reading from the record book): "Funds derived from the purchase of the $360,000 of said bonds to be deposited with Coffin & Stanton, to the credit of the funding fund, and to be used to take up and refund the outstanding bonds above mentioned. Coffin & Stanton forwarding same from time to time to the city for cancellation, charging such bonds to the funding fund at par (100) with interest to April 16, only."

Mr. THOMAS: Now, read the alternative of that in the contract.

The WITNESS (reading from purported contract): "The
385 funds derived from the purchase of $360,000 of said bonds to be deposited with Coffin & Stanton, to the credit of the city of Santa Cruz funding fund, against which shall be charged all outstanding bonds as above mentioned taken up and refunded by said Coffin & Stanton, and when so taken up and refunded, they may be cancelled by them and forwarded by express to the treasurer of the city of Santa Cruz for further cancellation. Such cancelled bonds shall be charged against said fund at par (100) with interest to April 16 only."

The witness further testified that he was very positive that the clause he had just read from the paper shown him was not in the contract that he copied; that there were no other material differences in the two contracts; that he knew the names printed on the two sheets of the purported tract, H. E. McKinney & Son; that H. E. McKinney & Son are residents of Santa Cruz and searchers of records there, and citizens in good standing.

J. L. WRIGHT, a witness on behalf of the defendant, testified as follows:

That he lives at Santa Cruz, and that he is the city clerk of that city, and had been acting in that capacity since the first of May, 1896, succeeding Mr. J. O. Lincoln, the gentleman who had just left the stand. The witness was then shown the document purporting to be the agreement of Coffin & Stanton, and marked "Filed April 16, 1894, O. J. Lincoln, city clerk," and testified: That since he assumed the office of city clerk of the city of Santa Cruz, said docu-
ment had been in his possession continuously; that there is
386 no other document or paper or instrument on file in the office of the city clerk of the city of Santa Cruz, purporting

to be an agreement between the city of Santa Cruz and Coffin & Stanton, or *vice versa*, dated February 27, 1894, and filed April 16, 1894; that he had made careful examination and comparison of the first and second pages of the instrument or document shown him; that the two sheets of which said document consists are ruled in red ink (printed), and that the red lines on the first page are wider apart nearly a quarter of an inch than those of the second page, but there are certain breaks or marks, separations, in the red lines on the one page and not on the other; that there is quite a perceptible difference in the shade of the ink on the two pages; that both are green, but one considerably lighter than the other; that he had examined and measured the top of the letters on both pages, and had discovered some differences between certain letters and characters occurring on one page, and the same letters and characters occurring on the other page; that the typewriter who wrote the first page used the small letter "l" to represent the figure one each time that it appears on such page, and that, with reference to the second page, the figure one appears three times, and the typewriter who wrote the second page used, in making the figure one, the capital letter "I" each time; and it is a fact that some typewriters use a small letter "l" in making the figure one, and others a capital "I;" and that there is also quite a difference in the appearance of the paper; one is a heavier paper than the other, although both have the same stamp of McKinney & Son, searchers of records.

387 The document purporting to be an agreement or proposition of Coffin & Stanton was then offered and read in evidence by the defendant, marked "Defendant's Exhibit I," and is as follows:

DEFENDANT'S EXHIBIT "I."

Agreement, Coffin & Stanton.

The City of Santa Cruz, deciding to refund $225,000 in 5 per cent. water bonds, $89,000 in 6 per cent. mortgage bonds, $39,000 in municipal improvement bonds, with accrued interest thereon, total, $360,000, into $360,000 in 5 per cent. refunding bonds of the denomination of $1,000 each, legally issued under the act of the legislature of the State of California, approved March 1, 1893, advertising the sale of same, and, in the event of the city not receiving satisfactory bids for such bonds at said sale, Coffin & Stanton agree to purchase said bonds at par and accrued interest, contract with the city to assume all obligations of interest and principal on the bonds to be refunded, making the refunding an assured fact from the date of the sale and delivery of the bonds to them. The funds derived from the purchase of $360,000 in said bonds to be deposited with Coffin & Stanton to the credit of the City of Santa Cruz funding fund, against which shall be charged all outstanding bonds as above mentioned, taken up and refunded, by said Coffin & Stanton, and when so taken up and refunded, they may be canceled by them and forwarded by express to the treasurer of the city of Santa Cruz

for further cancellation. Such cancelled bonds shall be charged against said fund at par (100), with interest to April 16 only.

388 Coffin & Stanton also agree to surrender and deliver to the city all bonds of the City Water Company outstanding, over and above the $89,000 above mentioned, and to surrender and assign to and release said city from all claims and demands against said City of Santa Cruz under their contract with the said city for construction of water works.

In consideration of the above agreement, the city on its part agrees to pay Coffin & Stanton 3 per cent. on the par value of the refunding bonds in the event of the city availing itself of its terms on or before April 16, 1894.

Coffin & Stanton further agree to prepare and furnish said city with the blank bonds and coupons thereto at their own cost and expense.

Dated at Santa Cruz, February 27, 1894.

COFFIN & STANTON.

Witness to signature:
Z. N. GOLDSBY.

(Stamped at the bottom, "H. E. Makinney & Son, searchers of records, notaries public and conveyancers, Santa Cruz, Cal.")

On cross-examination the witness Wright testified as follows: That he had lived in Santa Cruz six years; that he knew the firm of H. E. McKinney & Son; that their office was at No. 4 Cooper street, Santa Cruz, and consisted of two rooms; that witness thought that McKinney & Son had two typewriting machines in their office; that he had not noticed their stock of paper to see if they had bought it all at the same place and the same time; that they

389 may have had two machines; that they may have had a stock of paper which they purchased at different times, of different weights and different widths of ruling.

The defendant then offered and read in evidence ordinance No. 156 of the city of Santa Cruz, determining that the city shall acquire water works, which said ordinance reads as follows:

Ordinance No. 156.

"Ordinance No. 156.—An ordinance determining the public necessity for the acquisition, construction and completion of a permanent system of water works and water rights for the use of the city of Santa Cruz.

The mayor and common council of the city of Santa Cruz do ordain as follows, viz:

SECTION 1. It is hereby determined and declared that the public interest and necessity of the city of Santa Cruz demand the acquisition, construction and completion of a permanent system of water works for said city, including the usual and necessary structures, aqueducts, pipes, machinery and reservoirs for the same, and connected with its use, and of permanent water rights therefor, and

such acquisition, construction and completion are hereby declared to be a public necessity for the city of Santa Cruz. It is hereby determined and declared that the cost of the acquisition, construction, and completion of the said system of water works and of said water rights is too great to be paid for out of the ordinary annual income and revenue of said city of Santa Cruz.

SECTION 2. This ordinance shall be in force from and after its passage and approval.

390 SECTION 3. The clerk is hereby directed to cause this ordinance to be published for two weeks in the Santa Cruz 'Daily Sentinel,' a newspaper published in said city of Santa Cruz.

Passed on this second day of July, 1888, by the following votes: Ayes, Councilmen W. Finkeldey, H. Willey, E. H. Garrett, and C. W. Platt.

Approved —— 2, 1888.

G. BOWMAN,
Mayor of the City of Santa Cruz.

Attest: W. H. BIAS, *City Clerk.*"

The defendant then offered and read in evidence ordinance No. 157 of the city of Santa Cruz, calling a special election on the question of constructing and acquiring water works, which said ordinance reads as follows:

Ordinance No. 157.

"Ordinance No. 157.—An ordinance calling a special election and submitting to the qualified voters of the city of Santa Cruz the proposition for incurring a debt for the acquisition, construction, and completion of a permanent system of water works and water rights for the use of the city of Santa Cruz.

Whereas, the mayor and common council of the city of Santa Cruz did, on the second day of July, 1888, pass an ordinance (No. 156) by which they determined and declared that the public interest and necessity of the city of Santa Cruz demand the acquisition, construction and completion of a permanent system of water
391 works for said city, including the usual and necessary structures, aqueducts, pipes, machinery and reservoirs for the same, and connected with its use, and of permanent water rights therefor, and did also in said ordinance determine and declare that the cost of the acquisition, construction and completion of said system of water works, and of said water rights, is too great to be paid for out of the ordinary income and revenue of the said city of Santa Cruz. Whereas, the said ordinance was thereafter published for two weeks in the Santa Cruz 'Daily Sentinel,' a newspaper published in said city of Santa Cruz:

Now, therefore, the mayor and common council of the city of Santa Cruz do ordain as follows, to wit:

SECTION 1. A special election in and for the city of Santa Cruz is hereby called to be held in said city, at which there shall be sub-

mitted to the qualified voters of the said city of Santa Cruz a proposition for incurring an indebtedness by said city of the sum of three hundred thousand dollars, for the purposes set forth in said ordinance No. 156.

SECTION 2. The object and purpose for which the said investment is proposed to be incurred is the acquisition, construction and completion of a permanent system of water works for said city of Santa Cruz, including the usual and necessary structures, aqueducts, pipes, machinery and reservoirs for the same, and connected with its use, and of permanent water rights therefor. The estimated cost of the acquisition, construction, and completion of such improvement is three hundred thousand dollars. It is hereby determined and
392 declared that, for the purpose of supplying the inhabitants of the city of Santa Cruz with pure water at reasonable rates, and that the said city may itself be enabled to furnish its inhabitants with water sufficient for their requirements, there is a necessity for such improvement, and for the acquisition, construction and completion of the said system of water works, including the usual and necessary structures, aqueducts, pipes, machinery and reservoirs for the same, and connected with its use, and of permanent water rights therefor, and that the acquisition, construction and completion thereof is a public necessity.

It is further determined and declared that the cost of said improvement is too great to be paid out of the ordinary income and revenue of the city of Santa Cruz, and also that if the proposition of incurring said indebtedness for said purpose be accepted by the qualified voters of said city, as provided by the statute, bonds of the city of Santa Cruz for said municipal improvements shall issue for the payment of the cost thereof, to wit: in the amount of three hundred thousand dollars.

Said bonds shall be of the character known as serials, and shall be payable in the manner following, one-twentieth part of the whole amount of said indebtedness, together with annual interest at the rate of five (5) per cent. per annum on all unpaid sums thereof, shall be payable each and every year on a day to be fixed by the mayor and common council of said city until the whole amount of such indebtedness is paid.

SECTION 3. The election hereby called shall be held on Thursday, the sixth day of September, A. D. 1888, and the polls for said election shall be opened at nine o'clock a. m. and shall not
393 be closed until sundown of the same day. The places of voting in the different parts of the city and the officers of said election shall be the following: First ward, polling place, city hall; inspector, L. Curtis; judges, C. N. Davis, C. D. Holbrook. Second ward, polling place, Anthony block; inspector, Henry Keyn; judges, L. Schwartz, E. Anthony. Third ward, polling place, Duncan block; inspector, S. A. Bartlett; judges, M. O. Boyle, O. J. Lincoln. Fourth ward, polling place, Bay View school-house; inspector, W. H. Mason; judges, C. P. Holley, J. B. Harris. The officers of election aforesaid shall appoint two clerks of election for their respective polls, and the said inspectors, judges and clerks shall, prior to entering on

their respective duties, each take the oath of office prescribed by law for the inspectors, judges and clerks of State and county elections. In case any of the officers of election above designated shall fail to attend, those attending with the electors assembled, shall fill their places by appointing other competent persons from among the qualified electors present. All returns of said election shall be made out and signed by the officers of said election in the usual form, and deposited with the city clerk. No person shall be entitled to vote at said election unless he be an elector for State and county officers, and shall actually have resided within the ward in which he claims his vote thirty days next preceding said election.

SECTION 4. The ballots to be used at said election shall be of the same character as those used at the municipal elections, but must have the following caption and heading setting forth the
394 proposition to be voted upon, viz: Proposition for a municipal indebtedness of three hundred thousand dollars for the acquisition, construction and completion of a permanent system of water works, and of permanent water rights therefor. There shall be a space of two inches above and two inches below the said caption and heading, and a margin half an inch wide at the left of the printing on the balance.

SECTION 5. Voters of said election, desiring to accept the proposition set forth in this ordinance, shall, before voting, have written or printed on the ballot under said proposition the words, "For the indebtedness." Voters at said election desiring to reject said proposition must, before voting, have written or printed on said ballot, under said proposition, the words "Against the indebtedness."

SECTION 6. This ordinance shall take effect and be in force from and after its passage and approval.

SECTION 7. The city clerk is hereby directed to cause this ordinance to be published once a week for two weeks in the Santa Cruz 'Daily Surf,' a newspaper published in said city of Santa Cruz; passed August 6, 1888, by the following vote: Ayes, Councilmen W. Finkeldey, H. Willey, E. H. Garrett and C. W. Piatt. Approved August 6, 1888.

GUSTAVUS BOWMAN,
Mayor of the City of Santa Cruz.

Attest: W. H. BIAS, *City Clerk.*"

The defendant then offered and read in evidence ordinance
395 No. 164 of the city of Santa Cruz, declaring the result of the special election determining the proposition of incurring indebtedness, which said ordinance reads as follows:

Ordinance No. 164.

"Ordinance 164.—An ordinance declaring the result of the special election determining the proposition of incurring indebtedness, held September 6, 1888.

The mayor and common council of the city of Santa Cruz do hereby ordain as follows:

SECTION 1. The special election called by ordinance No. 157 of the city of Santa Cruz, passed and approved August 6, 1888, having been held at the time fixed, and by the officers appointed in and by said ordinance, and pursuant to the notice thereof, given as required by said ordinance and by ordinance No. 159 of said city, and by the law, and the returns of said election having been duly returned and filed with the city clerk, by the proper boards and officers of said election, which returns have been duly opened and canvassed by the mayor and common council sitting as a canvassing board of said election, and from which returns and a canvass thereof, it appears that the whole number of votes cast at said election was 759; that the following vote was cast to incur indebtedness and against such proposition, to wit: 'Proposition for a municipal indebtedness of three hundred thousand dollars for the acquisition, construction and completion of a permanent system of water works and of permanent water rights therefor.' 'For the indebtedness,' receiving 735 votes; 'Against the indebtedness,' received 22 votes;
396 scattering, 2 votes. And it also appearing that upon the said proposition submitted, the affirmative for incurring the indebtedness received more than two-thirds of the votes cast by the voters at said election, and said indebtedness as proposed was thereby authorized, it is therefore ordained and declared that the proposition of incurring an indebtedness of three hundred thousand dollars on behalf of said city for the acquisition, construction and completion of a permanent system of water works for said city, including the usual and necessary structures, aqueducts, pipes, machinery, and reservoirs for the same, and connected with its use, and of permanent water rights therefor, having received the requisite two-thirds of the votes cast at said election, said indebtedness and the issue of bonds therefor are declared to be authorized, and the city of Santa Cruz thereby authorized to incur a debt of three hundred thousand dollars for the purpose named, and to issue its bonds according to law as evidence of such indebtedness.

SECTION 2. This ordinance shall take effect and be in force from and after its passage and approval.

Passed this seventh day of September, 1888, by the following vote: Ayes, Councilmen Finkeldey, Willey, Garrett and Piatt.

Approved this seventh day of September, A. D. 1888.

G. BOWMAN,
Mayor of the City of Santa Cruz.

Attest: W. H. BIAS, *City Clerk.*"

397 The defendant then offered and read in evidence ordinance No. 168 of said city of Santa Cruz, providing for the issuance and sale of bonds, which said ordinance reads as follows:

Ordinance No. 168.

"Ordinance No. 168.—An ordinance to provide for the issuance and sale of bonds of the city of Santa Cruz.

Whereas, an indebtedness of three hundred thousand dollars has been authorized on behalf of the city of Santa Cruz by the electors thereof at a special election held September 6, 1888, pursuant to the provisions of the act of the legislature of the State of California, entitled 'An act authorizing the incurring of indebtedness by cities, town- or municipal corporations incorporated under the laws of this State, approved March 15, 1887,' and in accordance with the ordinance of said city No. 157, entitled 'An ordinance calling a special election and submitting to the qualified voters of the city of Santa Cruz the proposition for incurring a debt for the acquisition, construction and completion of a permanent system of water works and of water rights for the use of the city of Santa Cruz,' passed and approved August 6, 1888, and thereby bonds of the city of Santa Cruz for the amount of said indebtedness of the character specified and provided in said act and in the notice of such special election have been authorized to be issued by the city of Santa Cruz for the purposes in said ordinance named:

Now, therefore, the mayor and common council of the city of Santa Cruz do ordain as follows, to wit:

SECTION 1. There shall be issued by the city of Santa Cruz
398 six hundred bonds of the denomination of five hundred dollars each, bearing interest at the rate of five per cent. per annum, payable annually; said bonds shall be numbered consecutively from 1 to 600, both inclusive, and shall be divided in twenty series, to be numbered consecutively from 1 to 20, both inclusive, and consisting of thirty bonds each. The first series shall include those bonds which are numbered from 1 to 30, both inclusive, and each succeeding series shall include the thirty bonds which are numbered consecutively after those included in the next preceding series.

The bonds included in the first of said series shall be made payable on the tenth day of January, A. D. 1890, and one of the remaining series shall be made payable on the tenth day of January in each succeeding calendar year thereafter until and including the year 1909.

Said bonds shall be made payable to the order of the purchaser or payee by name, and shall bear date January 15, 1890, and shall be signed by the mayor and the city clerk, and shall have affixed thereto the seal of the city of Santa Cruz.

To each of said bonds there shall be attached interest coupons equal in number to the number of years which the bonds has to run before its maturity; each of said coupons shall represent a year's interest upon the principal amount of the bond at the rate of five

per cent. per annum, viz., twenty-five dollars, and shall be payable on the tenth day of January in each calendar year. Each coupon shall be made payable to the bearer, and must bear the signature of the mayor and city clerk.

Said bonds shall be substantially in the following form:

399 *Bond of the City of Santa Cruz.*

No. —. Series —. $500.

Municipal Improvement Fund No. 5.

'The City of Santa Cruz, a municipal corporation in the county of Santa Cruz, State of California, for value received, will pay to —— ——, or order, at the office of its city treasurer in said city of Santa Cruz, on the tenth day of January in the year —, the sum of five hundred dollars gold coin of the United States, with interest thereon at the rate of five per cent. per annum. Said interest to be paid annually in like gold coin on the tenth day of January of each calendar year from the date hereof until the maturity of said bonds at the office of the city treasurer of said city of Santa Cruz on presentation and surrender of the proper interest-bearing coupon hereto attached.

This bond is issued by the mayor and common council of the city of Santa Cruz under the provisions of an act of the legislature of the State of California, entitled "An act authorizing the incurring of indebtedness by cities, towns, or municipal corporations incorporated under the laws of this State, approved March 15, 1887," and pursuant to a vote and election given and held in said city under the provisions of said act on the sixth day of September, 1888. This bond ceases to bear interest when due, unless presented for payment.

In testimony whereof, the said City of Santa Cruz, by its mayor and common council, has caused this bond to be signed by
400 the mayor of said city, and attested by its city clerk, with the seal of said city attached, this fifteenth day of January, A. D. 1889.

——— ———,

Mayor of the City of Santa Cruz.

——— ———, *City Clerk.* [SEAL.]'

The coupons attached to said bonds shall be substantially in the following form:

'$25. *Municipal Improvement Fund No. 5.*

Coupon number —.

The City of Santa Cruz, by its city treasurer, will pay to the bearer hereof, at the office of said treasurer in said city on the tenth day of January in the year — twenty-five dollars gold coin for interest on bond No. —, issued January 15, 1889, under the provisions of the act of the legislature of the State of California, entitled "An act authorizing the incurring of indebtedness by cities, towns, or mu-

nicipal corporations incorporated under the laws of this State," approved March 15, 1887, and an election held therefor September 6, 1888.

——— ———,
Mayor of the City of Santa Cruz.

———— ————, *City Clerk.*'

SECTION 2. The city clerk is hereby authorized and required to cause to be prepared and printed, or lithographed upon linen parchment of the most suitable quality therefor, six hundred blank bonds with coupons attached of the form and denomination herein specified and provided for, sufficient in number, and have the
401 same ready for execution on behalf of this city on or before the fifteenth day of January, A. D. 1889.

SECTION 3. The city clerk is hereby directed to cause to be published in the Santa Cruz "Daily Surf" and the Santa Cruz "Daily Sentinel," newspapers published in the city of Santa Cruz, and also in the San Francisco "Daily Evening Bulletin," a newspaper published in the city and county of San Francisco, daily, for the period of twenty days prior and up to the first day of December, 1888, a notice of the intention of the mayor and common council of Santa Cruz to sell such number of the aforesaid bonds as they may deem necessary, and stating that sealed bids for the purchase of said bonds, or any number thereof, will be received by the city clerk on behalf of the mayor and common council at his office in said city, from the first publication of said notice up to the hour of 8 o'clock p. m. of the third day of December, 1888, and that thereafter the bonds will be sold by the mayor and common council to the highest and best bidder for cash, in United States gold coin, to be paid on delivery of said bonds at the city treasurer's office in said city of Santa Cruz. Said notice shall also state that the mayor and common counsel reserve the right to accept any portion of any bid and also to reject any and all bids, or any portion of any bids, and also that no bid will be considered that is for less than the face value of the bonds bid for. Said notice shall also state the number and denomination of said bonds, the number of series thereof, and the length of time that the several series have to run before becoming due, and
402 that not less than one bond of each series of the entire issue will be delivered in such aggregate amounts made up of an equal number of each series of the entire issue as the mayor and common council shall from time to time determine; that said delivery will be made with a rebate of any and all interest appearing to be due at the time of the delivery thereof; that the purchase price must be paid on the delivery of the bonds at the office of the city treasurer of said city; that the purchaser or purchasers of said bonds must give an undertaking with, at least, two sufficient sureties in the penal sum of ten per cent. of the purchase price payable to the city of Santa Cruz, and conditioned that the purchaser shall, within thirty days after receiving notice of readiness on the part of the mayor and common council to deliver up said bonds, take up and pay for the said bonds as delivered, according to the terms of the

notice given of the sale; and that a failure to take and pay therefor within the time named shall be a breach of the undertaking, and the sum mentioned in said undertaking shall be held and considered as liquidated damages; and that the said undertaking may be sued upon immediately in the name of the city of Santa Cruz, and the amount specified recovered in the name of the city of Santa Cruz, and the amount specified recovered as liquidated damages; that a deposit in the United States post-office at the city of Santa Cruz of the notice and readiness to deliver said bonds, signed by the city clerk, with the city's seal affixed, and addressed and directed to the purchaser of said bonds at his place of residence or business, as given in his bid, shall be deemed and taken as notice to the purchaser from the date of such deposit; and the purchaser's
403 assent to the form of notice herein provided for shall be embodied in said undertaking. The undertaking above referred to shall be filed with the city clerk, and retained in his custody as security against loss or damage to the city in case of failure to take or pay for said bonds by the purchaser.

SECTION 4. There shall be levied and collected annually for the term of twenty years by the proper authorities of the city of Santa Cruz at the time of the levy and collection of other city taxes, and, in addition to all other taxes levied for city purposes, a special tax sufficient to pay the annual interest as it falls due on said bonds that may be from year to year outstanding, and also sufficient to pay one twentieth part of the aggregate amount of said indebtedness so incurred. The moneys so collected shall constitute a sinking fund for the payment of the principal amount of which said indebtedness within twenty years from the time of contracting the same, and so that the indebtedness may be wholly paid by the tenth day of January, 1909, unless the said bonds shall have been previously redeemed.

SECTION 5. The taxes levied and collected as aforesaid shall be deposited in the treasury of the city of Santa Cruz to the credit of the municipal fund No. 5, authorized herein, and the amount of said tax so to be levied and collected as aforesaid shall be appropriate to the payment of the interest coupons of said bonds, and to the several principal sums thereof as they shall fall due, and payment thereof be demanded or required by the holder or holders thereof. All moneys deposited in the said fund shall be and
404 remain therein applicable only to the purpose herein provided for, and shall not be transferred to or borrowed by any other fund, temporarily or otherwise, or be used by the city authorities for any other purpose.

SECTION 6. This ordinance shall be in force from and after its passage and approval.

Passed this eighth day of October, A. D. 1888, by the following vote: Ayes, Councilmen W. Finkeldey, H. Willey, and E. H. Garrett.

Approved this eighth day of October, A. D. 1888.

G. BOWMAN,

Mayor of the City of Santa Cruz.

Attest: W. H. BIAS, *City Clerk.*"

The defendant then offered and read in evidence ordinance No. 170 of the city of Santa Cruz, directing the clerk to give notice inviting proposals for the sale of city bonds; which said ordinance reads as follows:

Ordinance No. 170.

"Ordinance No. 170.—Directing the clerk to give notice inviting proposals for the sale of city bonds.

SECTION 1. The city clerk is hereby directed to cause to be published in the Santa Cruz 'Daily Surf' and the Santa Cruz 'Daily Sentinel,' newspapers published in the city of Santa Cruz, and also in the daily 'Evening Bulletin,' a newspaper published in the city and county of San Francisco, daily for the period of two weeks prior to the tenth day of December, A. D. 1888, a notice of the intention of the mayor and common council of the city of Santa
405 Cruz to sell such number of the bonds ordered to be issued by the city of Santa Cruz by ordinance No. 168, that they may deem necessary, and stating that sealed bids for the purchase of said bonds, or any number thereof, will be received by the city clerk on behalf of the mayor and common council, at his office in said city, from the first publication of said notice up to the hour of 8 o'clock p. m. of the tenth day of December, 1888, and that at that hour, or thereafter, the bonds will be sold by the mayor and the common council to the highest and best bidder for cash, in United States gold coin, to be paid on delivery of said bonds at the city treasurer's office in the said city of Santa Cruz. Said notice shall also state that the mayor and common council reserve the right to accept any portion of any bid, and also to reject any and all bids, or any portion of any bid, and also that no bid will be considered that is for less than the face value of the bonds bid for. Said notice shall also state the number and denomination of said bonds, the number of series thereof, and the length of time that the several series have to run before becoming due, and that not less than one bond of each series of the entire issue will be delivered to any purchaser whose bid shall be accepted; said delivery to be in such aggregate amounts, made up of an equal number of bonds of each series of the entire issue as the mayor and common council shall from time to time determine; that said delivery will be made with a rebate of any and all interest appearing to be due at the time of the delivery thereof; that the purchase price must be paid on the delivery of the bonds at the office of the city treasurer of said
406 city; that the purchaser or purchasers of said bonds must give an undertaking with at least two sufficient sureties in the penal sum of ten per cent. of the purchase price, payable to the city of Santa Cruz, and conditioned that the purchaser shall, within thirty days after receiving notices of readiness on the part of the mayor and common council to deliver said bonds, take up and pay for said bonds as delivered, according to the terms of the notice given of the sale, and that a failure to take and pay therefor within the time named shall be a breach of the undertaking, and that the

sum mentioned in said undertaking shall be held and considered as liquidated damages, and that the said undertaking may be sued upon immediately in the name of the city of Santa Cruz, and the amount specified recovered as liquidated damages; that a deposit in the United States post-office at the city of Santa Cruz of a notice of readiness to deliver said bonds, signed by the city clerk, with the city's seal affixed, and addressed and directed to the purchaser of said bonds at his place of residence or business as given in his bid, shall be deemed and taken as notice to the purchaser from the date of such deposit; and the purchaser's assent to the form of notice herein provided for shall be embodied in said undertaking. The undertaking above referred to shall be filed with the clerk and retained in his custody as security against loss or damage to the city in case of failure to take or pay for said bonds by the purchaser.

SECTION 2. Section 3 of ordinance No. 168, entitled, 'An ordinance to provide for the issuance and sale of bonds of the city of Santa Cruz,' passed and approved October 8, A. D. 1888, is hereby repealed.

407 SECTION 3. This ordinance shall be in force from and after its passage and approval.

Passed this nineteenth day of November, A. D. 1888, by the following votes: Ayes, Councilmen W. Finkeldey, H. Willey, E. H. Garrett, and C. W. Piatt.

Approved this nineteenth day of November A. D. 1888.

GUSTAVUS BOWMAN,
Mayor of the City of Santa Cruz.

Attest: W. H. BIAS, *City Clerk.*"

The defendant then offered and read in evidence a resolution of the common council of the city of Santa Cruz, adopted at a meeting held on January 14, 1889; which said resolution appears on page 457 of Minute Book No. 2 of the common council of the city of Santa Cruz, and reads as follows:

Resolution.

By common council of the city of Santa Cruz, Jan. 14, 1889.

"It was moved by Councilman Willey, seconded by Councilman Finkeldey, that the following resolution be passed:

"'Whereas, the bonds authorized at an election held in the city of Santa Cruz on the sixth day of September, and amounting to three hundred thousand dollars, are now ready for signature and issuance to purchasers:

"'It is hereby resolved, by the mayor and common council of said city, that the mayor of said city be, and he is hereby
408 authorized and directed to negotiate and deliver any of said bonds to a purchaser or purchasers thereof at not less than their par value, but such delivery is not to be made unless such purchaser or purchasers, or their agents, exhibit and present to said mayor a receipt from the treasurer and collector, showing that the purchase price of the bond or bonds so negotiated has been paid

into the city treasury and received by said treasurer and collector in his official capacity, and at each regular meeting of the council, and oftener if required by the council, the mayor shall report in writing the amount of bonds so negotiated and delivered with the number of each bond, the payee thereof, and the date when — the person to whom delivered, and shall file with said report said receipts of the treasurer and collector, an abstract of which report shall be recorded with the clerk in a suitable book, and shall be spread upon the minutes of the council, which motion was put to a vote by his honor; Councilmen Finkeldey, Willey, Garrett, and Piatt voted in favor of said motion; whereupon the mayor declared the motion carried.'"

Defendant then offered and read in evidence report of G. Bowman, mayor of the city of Santa Cruz, to the common council of the city of Santa Cruz; which said report was dated September 12, 1889, and showed that, of the $300,000 bond issue of January 15, 1889, thirty bonds were sold on the fifteenth of January, 1889, sixteen on the seventeenth of January, 1889, one on the fifteenth of January, 1889,; thirteen on the fifteenth of January, 1889, and the remainder of said bond issue to Coffin & Stanton on the twelfth of September, 1889.

The above offer was objected to by the plaintiff on the
409 ground that the evidence offered was incompetent to sustain the issue that these obligations were not obligations of the city, simply because they were sold at a date after the repeal of the act which authorized their execution, unless the defendant offered to go further and show that these bonds never had been in or passed through the hands of purchasers for value without notice.

Counsel for defendant stated that the bonds were sold on September 12, 1889, to Coffin & Stanton, were by them sold and transferred to other persons, whose knowledge of the date of the sale of the bonds by the city of Santa Cruz, counsel were not able to show. The plaintiff's objection was overruled, and plaintiff took an exception.

CHARLES E. WILLIAMS, a witness on behalf of the defendant, testified as follows:

That he was city treasurer and tax collector of the city of Santa Cruz, and had held that office since April, 1892, continuously; that the city of Santa Cruz had never received any payment for the refunding bonds, or any of the refunding bonds, purporting to have been executed and dated April 16, 1894, and that no money had ever at any time come into his possession as treasurer or otherwise in the payment of any of those bonds.

On cross-examination the witness testified: That since the issue of the refunding bonds, some of the original bonds of the city of Santa Cruz, described in the ordinance as the bonds for which the refunding bonds were to be issued, had come to him indirectly through the city clerk for cancellation, the city clerk referred to being Mr. O. J. Lincoln; that Mr. Lincoln came to the office
410 of witness and presented a package, but that witness did not do anything—he refused to do anything; and that Mr. Lin-

coln took the package away; that when Mr. Lincoln produced the bonds at the office of the witness, he said: "Here are some bonds which have been returned by Coffin & Stanton, which you are to enter in your books;" that witness refused to have anything to do with them whatever; that this may have been two or three months after Coffin & Stanton received the refunding bonds, probably July or August, and before Coffin & Stanton had failed; that witness had since seen some of those bonds, one or two of them, which had been removed from the package; that they were the mortgage bonds of the private water company known as the City Water Company of Santa Cruz; that he did not know what had become of such bonds.

On redirect examination the witness testified: That on the thirteenth of March, 1894, the bonded indebtedness of the city of Santa Cruz, evidenced by bonds and warrants of said city, as appeared on the books of the treasurer, amounted to about $40,000 on account of the bonds issued on improvement funds, Nos. 1, 2, 3, and 4, and $225,000 on account of the water bonds, dated January 15, 1889, all being municipal improvement bonds; that there was no record whatever of the eighty-nine so-called first-mortgage bonds of the corporation, the City Water Company of Santa Cruz, in his office as treasurer of the city, and that said mortgage bonds were not part of the bonded indebtedness of the city of Santa Cruz, so far as the treasurer's books show.

On recross-examination the witness testified: That his
411 books did contain entries with regard to the payment of interest on said first-mortgage bonds of the water company, but that his books contained no entries in regard to the bonds of said private corporation; that on one occasion in 1893, interest on said mortgage bonds was forwarded to the Holland Trust Company for payment, and an account of such disbursement appears in the books of his office; that there is no other entry of any such payment of interest; that the city council created what was called a mortgage bond fund in 1892 or 1893, and that certain receipts derived from the water works were carried to the credit of this fund, and that against this fund was charged the payment of the sum transmitted to the Holland Trust Company in 1893, in payment of interest on said mortgage bonds; that witness as treasurer is still crediting to said mortgage bond fund a certain proportion of the receipts from the water works.

Mr. Thomas then questioned the witness as follows:

Q. Have you got that account with you?
A. No, sir.
Q. But you have paid no interest on those bonds since the first?
A. No, sir.
Q. Do you know what there is standing to the credit of that fund today?

Mr. Maguire: I object to the question as immaterial and not cross-examination.

The COURT: I will overrule the objection.
Mr. MAGUIRE: We will take an exception.

412 The witness then answered that there was standing to the credit of said mortgage bond fund $14,100, and some odd dollars.

On further redirect examination the witness testified that he sent the Holland Trust Company in 1893 a draft, the amount of which he did not remember; that subsequently the city heard from said Holland Trust Company, and said trust company claimed that the amount was not sufficient to pay the interest on the bonds as they had the account made out; that this led to a great deal of correspondence between the witness and the Holland Trust Company; that the said trust company claimed there was $103,000 worth of those bonds outstanding or issued by them; that the city claimed there was only $89,000 that had been issued; that the amount sent the Holland Trust Company by witness in 1893 was sufficient to pay interest then due on $89,000 of said mortgage bonds; that no interest has ever been paid on any of the mortgage bonds other than the $89,000 worth, the interest on which was forwarded to the Holland Trust Company in 1893; that interest was paid in that year, 1893, on eighty-nine of the mortgage bonds, for the reason that the city authorities then claimed that no more should have been issued under the contract with Coffin & Stanton.

The defendant then offered and read in evidence an affidavit of the publication of a notice of sale of bonds in the San Francisco "Chronicle," which affidavit was marked Defendant's Exhibit "Q," and reads as follows:

DEFENDANT'S EXHIBIT "Q."

"*Notice of Sale of Bonds.*

413 "Notice is hereby given that it is the intention of the mayor and common council of the city of Santa Cruz, in the State of California, to sell three hundred and sixty (360) bonds of said city of Santa Cruz of the denomination of one thousand dollars ($1,000) each, and which said bonds and the coupons thereto attached shall be substantially in the following form, to wit:

"'UNITED STATES OF AMERICA, *State of California.*

"*Bond of the City of Santa Cruz.*

"'No. —. Series —. $1,000.

"'*Refunding Bond.*

"'The City of Santa Cruz, a municipal corporation in the county of Santa Cruz, State of California, is indebted to and promises to pay to the bearer, for value received, the sum of one thousand ($1,000) dollars, gold coin of the United States, on the fifteenth day of April, A. D. —, with interest thereon, in like gold coin, at the

rate of five (5) per cent. per annum, payable annually on the fifteenth day of April of each calendar year from the date hereof, at the office of the city treasurer of said city of Santa Cruz, on presentation and surrender of the proper interest-bearing coupon hereto attached.

"'And for the payment of the principal sum herein named, and the interest accruing thereon, the said City of Santa Cruz is held and firmly bound, and its faith and credit, and all the real and personal property of said city are hereby pledged for the prompt payment of this bond and interest at maturity.

"'This bond is one of a series of bonds of like date, tenor
414 and effect, issued by the said City of Santa Cruz for the purpose of refunding the bonded indebtedness of said city and issuing bonds therefor, and providing for the payment of the same, and in pursuance of and in conformity with the provisions of an act of the legislature of the State of California, entitled "An act to amend an act entitled 'An act to authorize the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same' (approved March 15, 1883)," approved March 1, 1893.'

"And in pursuance of and in conformity with the constitution of the State of California and the ordinance of the city of Santa Cruz, and in pursuance of and in conformity with a vote of more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election duly and legally called and held and conducted in said city, as provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published in the manner as required by law, and after the result of said election had been duly canvassed, found and declared in the manner and as required by law.

"And it is hereby certified and declared that all acts, conditions and things required by law to be done precedent to and in the issue of said bonds, have been properly done, happened, and performed in legal and due form as required by law.

415 "This bond ceases to bear interest when due unless presented for payment.

"In testimony whereof, the said City of Santa Cruz, by its mayor and common council, has caused this bond to be signed by the mayor of said city of Santa Cruz, and attested by its said clerk, with the seal of said city attached, this sixteenth day of April, A. D. 1894.

"——— ———,

"*Mayor of the City of Santa Cruz.*

"Attest: ——— ———, *City Clerk.*

"The coupons attached to said bonds shall be substantially in the following form:

"'Refunding bond number —. Coupon number —.

"'The City of Santa Cruz will pay to the bearer hereof, on the fifteenth day of April, A. D. —, at the office of the city treasurer

of said city, fifty ($50) dollars, gold coin of the United States, for interest on bond number —, issued sixteenth day of April, A. D. 1894.

"'—— ——,

"'*Mayor of the City of Santa Cruz.*

"'—— ——, *City Clerk.*'

"That sealed bids for the purchase of said bonds, or any number thereof, will be received by the city clerk on behalf of the mayor and common council of said city, at the office of the city clerk, in said city of Santa Cruz, from the first publication of this
416 notice up to the hour of 2 o'clock p. m., on the sixteenth day of April, 1894, and thereafter said bonds will be sold by the mayor and common council to the highest bidder, for not less than their face value, in United States gold coin, to be paid on delivery of said bonds, at the city treasurer's office in said city of Santa Cruz.

"Said bonds shall be three hundred and sixty (360) in number, of the denomination of one thousand dollars ($1,000) each, and shall bear interest at the rate of five per cent. per annum, payable annually. They shall be of the character known as 'serials,' and shall be payable, principal and interest, in gold coin of the United States in the manner following:

"One-fortieth part of the principal of the indebtedness to be incurred in the issuing of said bonds shall be payable annually, to wit, the sum of nine thousand dollars (9,000), together with the annual interest on all sums of said indebtedness then unpaid.

"Said bonds shall be numbered consecutively from one to three hundred and sixty (360), both inclusive, and shall be divided into forty series, to be numbered consecutively from one (1) to forty (40), both inclusive, and consisting of nine (9) bonds each. The first series shall include those bonds which are numbered from one (1) to nine (9) inclusive, and each succeeding series shall include the nine (9) bonds which are numbered consecutively with those included in the next preceding series.

"The bonds included in the first of said series shall be made payable on the fifteenth day of April, A. D. 1895, and all of
417 the remaining series shall be made payable in consecutive order on the fifteenth day of April, in each succeeding calendar year thereafter until and including the year 1934.

"Each bid must be accompanied by a certified check on the Bank of Santa Cruz County, of the city of Santa Cruz, payable to the order — the mayor of the city of Santa Cruz, for five (5) per cent. of the amount bid by the bidder, as a guarantee on the part of the bidder that, in case his bid is accepted, he will, within twenty days after receiving notice of the readiness on the part of the mayor and common council to deliver said bonds, take and pay for the same as delivered, according to the terms of this notice of sale; and that, in case of the failure of any bidder whose bid shall be accepted for said bonds, or any part thereof, to take and pay for the bonds for which his bid may be accepted, within said time named, his check shall be

collected by said mayor, and the money collected thereon shall be paid to the city of Santa Cruz as liquidated damages accruing to said city of Santa Cruz against said defaulting bidder. All checks of bidders whose bids shall not be accepted will be returned to them; that the deposit in the United States post-office at the city of Santa Cruz of a notice of the readiness to deliver said bonds, signed by the city clerk, with the seal of the city affixed, and addressed and directed to the purchaser of said bonds, at his place of residence, as given in his bid, shall be deemed and taken as notice to the purchaser from the date of such deposit, and the purchaser's assent to the form of notice herein provided shall be embodied in his bid.

418 "The mayor and common council reserve the right to accept any portion of any bid, and also to reject any and all bids or any portion of any bid, and, also, that no bid will be considered that is for less than the face value of the bonds bid for.

"By order of the mayor and common council of the city of Santa Cruz, State of California.

"O. J. LINCOLN,
"*City Clerk of said City of Santa Cruz.*

"Dated March 28, 1894."

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

C. E. Ray, of the said city and county, being duly sworn, affirms and says: That he is a white male citizen of the United States; that he is over twenty-one years of age, and is competent to be a witness on the hearing of the matters mentioned in the annexed printed notice; that he has no interest whatsoever in the same; that he is principal clerk of M. H. de Young, printer and publisher of the San Francisco Chronicle, a newspaper which is printed and published daily and weekly in the city and county of San Francisco, and has charge of all the legal advertisements in said newspaper; and that the notice of sale of bonds of which the annexed is a printed copy, has been published in said newspaper at least nineteen times consecutively, commencing on the twenty-ninth day of March, A. D. 1894, and ending on the sixteenth day of April, A. D. 1894, both days inclusive. And further sayeth not.

C. E. RAY.

419 Subscribed and sworn to before me this ninth day of November, 1897.

JOHN J. DEANE,
Notary Public in and for the City and County of
[SEAL.] *San Francisco.*

The defendant then offered and read in evidence an affidavit of publication of the same notice of sale of bonds in the "Santa Cruz Sentinel," which affidavit was marked "Defendant's Exhibit R," and reads as follows:

DEFENDANT'S EXHIBIT "R."

Affidavit of Publication.

In the City of Santa Cruz, County of Santa Cruz, State of California.

In the Matter of Sale of Municipal Bonds of THE CITY OF SANTA CRUZ.

Affidavit of publication of notice of sale of bonds.

STATE OF CALIFORNIA, } ss:
County of Santa Cruz, }

Duncan McPherson, being duly sworn according to law, says: That he is now, and — all the dates hereinafter mentioned was, a citizen of the United States, over twenty-one years of age, and a resident of the city of Santa Cruz, county of Santa Cruz, State of California; that he has no interest whatsoever in the matter of said notice of sale of bonds, and is competent to be a witness at the hearing of any proceedings in said matter; that the "Santa Cruz Daily Sentinel" is now and at all the dates herein mentioned was, a newspaper printed and published daily (Mondays and days following legal holidays excepted) at the said city of Santa Cruz, in said county and State; that the said affiant is now and was at all of the dates herein mentioned, one of the printers of said newspaper and the principal clerk in the office thereof, and as such printer and clerk has, and at all of said dates had, charge of all the advertisements in said newspaper; that an advertisement, to wit: a notice of sale of bonds, of which the annexed is a true and correct printed copy, has been published in said newspaper at least fifteen days, and as often during the period of said fifteen days as said newspaper was regularly issued, to wit: on each of the following dates: March 29, 30, and 31, 1894, April 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15, 1894.

420

DUNCAN McPHERSON.

Subscribed and sworn to before me this nineteenth day of April, 1894.

Z. N. GOLDSBY,
Notary Public.

The defendant then offered and read in evidence an affidavit of publication of the same notice of sale of bonds in the Santa Cruz "Surf," which affidavit was marked "Defendant's Exhibit S," and reads as follows:

DEFENDANT'S EXHIBIT "S."

Affidavit of Publication.

In the Superior Court of the County of Santa Cruz, State of California.

Affidavit of publication of notice of sale of bonds.

421 STATE OF CALIFORNIA, } ss:
County of Santa Cruz, }

Ernest Otto, being duly sworn according to law, says: That he is now and at all the dates hereinafter mentioned was, a citizen of the United States, over twenty-one years of age, and a resident of the city of Santa Cruz, county of Santa Cruz, State of California; that he has no interest whatsoever in the matter, and is competent to be a witness at the hearing of any proceedings thereof; that the "Santa Cruz Surf" is now, and at all the dates herein mentioned was, a newspaper printed and published daily (Sundays and legal holidays excepted) at the said city of Santa Cruz, in said county and State; that the said affiant is now, and was at all of the said dates herein mentioned, the principal clerk in the office of said newspaper, and as such clerk has, and at all of said dates had charge of all the advertisements in said newspaper; that the advertisement, to wit: notice of sale of bonds, in the matter of which the annexed is a true and printed copy, has been published in said newspaper at least —, and as often during the period of said — as said newspaper was regularly issued, to wit: on each of the following dates: March 29, 30, and 31, April 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 1894.

ERNEST OTTO.

Subscribed and sworn to before me this seventeenth day of April, 1894.

O. J. LINCOLN, *City Clerk.*

[Seal of the City of Santa Cruz, Cal.]

422 The defendant then offered and read in evidence resolution No. 14 of the mayor and common council of the city of Santa Cruz; which said resolution was marked "Defendant's Exhibit T," and reads as follows:

DEFENDANT'S EXHIBIT "T."

Resolution No. 14.

"Resolution No. 14.—Resolved, That the mayor and common council do hereby authorize the City Water Company of Santa Cruz to issue to Messrs. Coffin & Stanton bonds of said company to a total par value of twenty-two thousand dollars.

"Adopted this twenty-fourth day of November, A. D. 1890, by

the following vote: Ayes, Councilmen Finkeldey, Young and Drullard; noes, none; absent, Councilman Weeks.

"(Signed) O. J. LINCOLN, *City Clerk.*

"Approved this twenty-fourth day of November, A. D. 1890.

"G. BOWMAN,

"*Mayor City of Santa Cruz.*

"Attest: O. J. LINCOLN, *City Clerk.*"

O. J. LINCOLN, a witness on behalf of defendant, was then recalled, and testified as follows:

That he was present in court when the contract of Coffin & Stanton and the order of the city council of Santa Cruz, accepting
423 the offer of Coffin & Stanton, was put in evidence, and also the resolution offered in evidence, and also said resolution No. 14, just offered and read in evidence, authorizing the transfer by the City Water Company of twenty-two bonds to Coffin & Stanton; that the said contract and order of the common council provided for delivering fifty of those bonds to Coffin & Stanton; that there was no other authorization to deliver bonds of the City Water Company to Coffin & Stanton; that by order of the said common council, Coffin & Stanton were to receive in all $72,000 of said mortgage bonds.

The said witness, O. J. LINCOLN, was then, by permission of the court, examined in chief on behalf of the plaintiff, and testified as follows:

(By Mr. THOMAS:)

Q. Mr. Lincoln, will you kindly examine the minutes of the proceedings of the common council under dates of April 24, April 25, April 30, May 3, May 5, and the first of the two meetings of May 7, 1894, in which you have stated that on roll-call all were present. Can you now state from your memory, and refreshing the same from those entries, whether William T. Jeter, the mayor of the municipality, was present at those meetings?

Mr. MAGUIRE: I object to the question as immaterial, irrelevant and incompetent.

The COURT: I overrule the objection.

Mr. MAGUIRE: I will take an exception. I assume that this evidence is intended to show that Mr. Jeter was a *de facto* officer for the purpose of participating in the authorization of the delivery and sale of the bonds. Our objection, in addition to the objection
424 we have made, goes to the point that this would not at all tend to show that he was a *de facto* officer on the afternoon of the sixteenth day of April, 1894.

The COURT: I overrule the objection.

Mr. MAGUIRE: I take an exception.

The witness then answered that William T. Jeter was present at such meetings.

The witness then testified that after the delivery of the refunding bonds to Coffin & Stanton, the witness had received fifteen $1,000 mortgage bonds of the City Water Company of Santa Cruz, and three $500 bonds, known as the five per cent. water bonds of the city of Santa Cruz; that said bonds came to him by registered mail, addressed to him, but that he couldn't state whether the title city clerk was added to the address or not; that he ascertained from the enclosure that the bonds were sent to him by Coffin & Stanton; that after opening the package and finding what they contained, he took them to the city treasurer, who declined to receive them, and that, at the end of witness's term of office as city clerk, he turned over said bonds to his successor.

On cross-examination the witness testified that at the time he received such bonds he did not know, and had no means of knowing, how many of the mortgage bonds of the City Water Company of Santa Cruz had been issued by the Holland Trust Company to Coffin & Stanton, and that at that time he did not know of his own knowledge whether there were more than eighty-nine of those bonds issued to Coffin & Stanton.

425 It is admitted by plaintiff that from the thirtieth of June, 1888, to the first of July, 1895, the assessed valuation of all taxable real and personal property in the city of Santa Cruz did not exceed $3,907,404.00 at any time.

The plaintiff then offered in evidence ordinance No. 329 of the city of Santa Cruz, passed and approved on the twenty-fourth day of September, 1894; to which defendant objected on the ground that the same was immaterial, irrelevant, and incompetent. The objection was by the court overruled; to which ruling of the court the defendant duly excepted. The ordinance was then read in evidence as follows:

(Here insert ordinance No. 329, page 305, and down to the words "Mr. Maguire," on page 306, vol. IV of said transcript.)

It was admitted by the plaintiff that nothing has ever been paid by the city of Santa Cruz on account of principal or interest of any of the refunding bonds alleged to have been issued by said city of Santa Cruz, and bearing date the sixteenth day of April, 1894.

Mr. Maguire here stated that since the signing of the stipulation as to certain facts heretofore offered and read upon the trial, he had ascertained that, in addition to the publication of the ordinance calling a special election upon the question of acquiring and constructing water works, a notice of such election, printed on cardboard, was posted at the polling places, and offered to amend the stipulation by incorporating that admission in place of the admission that a copy of the ordinance simply had been posted at such polling places.

Plaintiff's attorney here inquired if defendant's attorney
426 would admit that the notice was posted at all of the polling places for the time and in the manner described by the ordinance.

Mr. MAGUIRE: Mr. Lindsay's recollection on that subject is not

sufficient to enable me to say that. I will agree to all that is true concerning the matter, as soon as we ascertain what the fact is.

The COURT: It can be modified.

Mr. MAGUIRE: We will correct the stipulation in accordance with the facts in that behalf.

Counsel for defendant thereupon offered to read in evidence the deposition of Walter Stanton, taken on behalf of defendant.

Mr. THOMAS: I make a formal objection here, that counsel for defendant are required to introduce their evidence in the same order in which it was taken. The evidence of Stanton, as your honor will see, contradicts, to a considerable extent, or at least we so maintain, the testimony of one of the witnesses taken on behalf of the defendant, namely, F. H. Prince. A good many of the questions and answers asked of Mr. Stanton are, we think, subject to an objection that they contradict the testimony of a witness whose testimony was taken previous to that of Stanton's, and without laying the proper foundation for contradicting the witness. Unless this case can proceed upon the same theory upon which the depositions were taken, it will be impossible for us to make objections until after the close of both depositions, when we must make a motion to strike out. It seems to me proper in this case for counsel for plaintiff to insist that the order of trial, and the order of production of the depositions, shall be the same order in which they
427 were taken chronologically, in order that we may raise the objections that I have just suggested. For example, with the witness F. H. Prince, who we maintain will testify to a certain fact. The testimony of Stanton, we shall maintain, is, that on some other occasons, Mr. Prince stated otherwise than he testified. Our principal objection to that testimony on the part of Mr. Stanton is, that the proper foundation was not laid for it. On the examination of Mr. Prince, he was not asked if he did not, on a certain occasion, and to a certain person, make a statement different to the one he testified to. If counsel are at liberty to introduce their depositions in the order they see fit, that objection cannot be made, because your honor has not before you the depositions of the witnesses previously taken. We, therefore, make a motion that counsel be required to introduce their depositions in the order in which they were chronologically taken.

The COURT: If the purpose of the testimony is to impeach the testimony of your witness—your witness, I understand.

Mr. THOMAS: No, sir, a witness called by the defendant.

The COURT: Then I shall deny your motion, and let counsel proceed in their own way.

Mr. THOMAS: We will take an exception.

Mr. MAGUIRE: I will explain to your honor the position. The question Mr. Thomas raises may arise upon an objection to some of these questions. The fact is, that Mr. Wallace, a witness, a
428 witness on behalf of the plaintiff, gave testimony which we think shows that F. H. Prince & Co. were acting as the agents of E. G. & E. Wallace in the purchase of 150 Santa Cruz bonds, involving $150,000 and interest, in a matter that will be

largely determined by the result of this action. F. H. Prince, when examined as a witness on behalf of the defendant, gave testimony which was contrary to what we believe to be the fact, and what we expect to prove by him. We attempted to prove by Mr. Walter Stanton the facts that we have expected to prove by Mr. Prince, and that we think are shown by the testimony of Mr. Wallace. We prefer to offer at this time the testimony of Mr. Stanton, and let the objections urged by Mr. Thomas be made to the questions that may seem to involve impeachment, if they do. We are not at liberty to impeach our own witness, but we may contradict him. We have called for testimony that does contradict Mr. F. H. Prince, from Mr. Stanton. We do not feel that we are in any way bound by the testimony of Mr. Price, except so far as it would bear against us if he were a witness for the other side. Probably we may not impeach him in the sense in which that term is accepted.

Mr. THOMAS: Your honor denies my motion?

The COURT: Yes.

Mr. THOMAS: We will take an exception.

Mr. Lindsay (one of the attorneys for defendant), then proceeded to read the deposition of Walter Stanton, which is in substance as follows:

WALTER STANTON, having been duly sworn, testified as follows:

429 I reside at Hillsdale, New Jersey; was formerly of the firm of Coffin & Stanton. That firm was composed of William Edward Coffin and Walter Stanton.

Q. Will you please look at paper marked for identification "Defendant's Exhibit 1," of August 4, 1897, "H. S. V. D., notary public," and state whether the signature "Coffin & Stanton" was signed by you?

A. That is my signature.

Mr. THOMAS: I move to strike out the answer as indefinite, as there is no notification by the commissioner which signature he pointed to when he identified it as his.

Mr. LINDSAY: It already appears there was but one signature; that he signed but one contract.

Mr. THOMAS: He does not say which that was. He says, "That is my signature," without specifying which.

Mr. MAGUIRE: That is the last page of what we know as the forged contract.

The COURT: Agreement No. 1 was the document which had his signature to it?

Mr. MAGUIRE: Yes. That, we say, was the forged instrument.

The COURT: It had his signature?

Mr. MAGUIRE: Yes.

The COURT: The other purports to be a certified copy?

Mr. MAGUIRE: That is a certified copy of what now purports to be the contract on file. The other one which he refers to, "Exhibit 2" for identification, was a certified copy of the contract as recorded in the minutes.

Mr. THOMAS: I withdraw the objection. I did not understand it.

(Mr. Lindsay proceeded with the reading of the deposition of Walter Stanton, as follows:)

430 I signed "Coffin & Stanton" to that paper. I personally negotiated the contract with the city of Santa Cruz. I cannot tell whether the paper is now in precisely the form in which it was when it was signed. All that I can tell is, that it is my signature. I cannot tell as to the phraseology of the contract. I remember that I did sign a contract relating to the refunding bonds, but whether "Exhibit 1" for identification is in the precise form in which I signed it, I cannot tell. I did not sign more than one contract in regard to those bonds.

Comparing the instruments, "Defendant's Exhibit 1" and "Defendant's Exhibit 2," I notice the following differences: In "Exhibit 1" the word "Walter," the first word of the second line, does not appear in "Exhibit 2." In "Exhibit 1," on the ninth line, the word is "contract"; in "Exhibit 2" the word in place thereof is "contracting." In "Defendant's Exhibit 1," on the fourteenth line, the words read "credit of the city of Santa Cruz funding," in "Exhibit 2" the words are "credit of the funding." In "Defendant's Exhibit 1" the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first lines read as follows: "Against which shall be charged all outstanding bonds as above mentioned, taken up and refunded by said Coffin & Stanton, and when so taken up and refunded, they may be canceled by them and forwarded by express to the treasurer of the city of Santa Cruz for further cancellation. Such canceled bonds shall be charged against said fund at par (100), with interest to April 16th only." "Defendant's Exhibit 2" reads as follows, "And to be used to take up and refund the out-

431 standing bonds as above mentioned, Coffin & Stanton forwarding same from time to time to the city for cancellation, charging such bonds to the funding fund at par (100), with interest to April 16 only."

In "Defendant's Exhibit 1," the twenty-first line reads, "bonds of the City Water Company outstanding." In "Exhibit 2" in the place thereof, are the words, "all bonds of the City Water Company outstanding." In "Defendant's Exhibit 1," on the twenty-first and twenty-second lines, are the words, "over and above the $89,000." In "Exhibit 2," the words are, "over and *the* above $89,000." In "Defendant's Exhibit 1," in the twenty-fourth line, the words are "contract with the said city." In "Exhibit 2," the words are, "contract with said city." In "Defendant's Exhibit 1," the date reads, "dated at Santa Cruz." In "Exhibit 2," the words are, "dated at Santa."

(The witness, continuing:) I remember J. N. Goldsby, who signed his name as a witness to the contract, "Defendant's Exhibit 1." I have no recollection as to which of these exhibits is the contract signed by me. I cannot remember the phraseology. The exhibits relate to the same matter, except as to those differences in phrase-

ology. I have no recollection whether the contract signed by me had two or three sheets. It had more than one. I do not see that the variations in the exhibits make any difference, one way or the other. The prices are the same.

Q. In "Defendant's Exhibit 2," it is provided as follows: "The funds derived from the purchase of the $360,000 in said bonds, to be deposited with Coffin & Stanton, to the credit of the funding fund and to be used to take up and refund the outstanding bonds as above mentioned, Coffin & Stanton forwarding same from time to
432 time, to the city, for cancellation;" in "Defendant's Exhibit 1 for identification," the provision is: "The funds derived from the purchase of $360,000 in said bonds, to be deposited with Coffin & Stanton, to the credit of the city of Santa Cruz funding fund, against which shall be charged all outstanding bonds as above mentioned, taken up and refunded by said Coffin & Stanton." Is not the last-mentioned provision more favorable to Coffin & Stanton?

A. I do not think so.

Q. In "Defendant's Exhibit 2," you bound yourselves to use the money derived from the purchase of the $360,000 in bonds to take up and refund the outstanding bonds mentioned in the contract. Is there any such obligation in "Exhibit 1"?

A. I do not consider that we did so bind ourselves.

(The witness continuing:) I know F. H. Prince & Company, of Boston. I have had dealings with Mr. Prince, of that firm, in reference to these refunding bonds. We sold him a certain amount of the refunding bonds. I have not a distinct recollection of the transaction, and cannot state how many. I do not know when that was. It was in 1894, three or four months after the making of the contract with the city of Santa Cruz. It was a considerable amount. I am sure it was over $50,000.

My recollection is that at the time of the transaction, we transferred to the firm of F. H. Prince & Company the papers relating to the issue of the refunding bonds. My best recollection is that we sent all the papers relating to the bonds. It must have included
433 the contract. I have no recollection as to sending the contract, but I do remember that all the papers were sent to Boston. I gave my office orders to do so. I did not carry out the details. I think it was done in the natural course of business. It is the usual thing to do.

It is my recollection that Mr. Prince asked me for additional papers, subsequent to the sending of the first papers to Boston—some papers that had been left out; and Mr. Prince, or his office, asked me for additional papers. I gave orders that they were to be sent, but I cannot swear that they were sent. I do not recollect if anything was said in any of the communications to me by Mr. Prince, or Prince & Co., that they wanted the papers for their attorneys, nor why they wanted the additional papers. I think the negotiations on this transaction lasted about five or six weeks from the beginning until its consummation. It was not consummated until after the papers had been in their possession for some time.

The bonds were delivered to F. H. Prince & Co., or their agents, a considerable time after the papers had been in th-ir possession.

(On cross examination, the witness testified :) I did not personally send any papers to Prince & Co., nor see any sent by mail, clerk, or otherwise. My means of knowing that the papers were sent is, that they asked for additional papers verbally, but I do not know what additional papers were sent; and I do not know, at the time the p-pers were sent, what papers I had in my possession relating to this matter.

(On redirect examination, the witness testified :) My recollection is that I instructed the office, some clerk there, to send the
434 papers regarding the Santa Cruz bonds to F. H. Prince & Co. The request for additional papers was made to me personally.

DEFENDANT'S EXHIBIT No. 1.

Contract.

" Defendant's Exhibit 1, August 4, 1897."

" The city of Santa Cruz, deciding to refund $225,000 in 5 per cent. water bonds, $89,000 in 6 per cent. mortgage bonds, $39,000 municipal improvement bonds, with accrued interest thereon, total, $360,000, into $360,000 in 5 per cent. refunding bonds, of the denomination of $1,000 each, legally issued, under the act of the legislature of the State of California, approved March 1, 1893, advertising the sale of same, and in the event of the city not receiving satisfactory bids for such bonds at said sale, Coffin & Stanton agree to purchase said bonds at par and accrued interest, contract with the city to assume all obligations of interest and principal on the bonds to be refunded, making the refunding an assured fact from the date of the sale, and delivery of the bonds to them. The funds derived from the purchase of $360,000 in said bonds to be deposited with Coffin & Stanton to the credit of the city of Santa Cruz funding fund, against which shall be charged all outstanding bonds as above mentioned, taken up and refunded by said Coffin & Stanton, and when so taken up and refunded, they may be canceled by them and forwarded by express to the treasurer of the city of Santa Cruz for further cancellation. Such canceled bonds shall be charged against said fund at par (100), with interest to April 16, only.
435 Coffin & Stanton also agree to surrender and deliver to the city all bonds of the City Water Company outstanding, over and above the $89,000 above mentioned, and to surrender and assign to and release said city from all claims and demands against said city of Santa Cruz under their contract with the said city for construction of water works.

In consideration of the above agreement, the city on its part agrees to pay Coffin & Stanton 3 per cent. on the par value of the refunding bonds in the event of the city availing itself of its terms on or before April 16, 1894.

Coffin & Stanton further agree to prepare and furnish said city

with the blank bonds and coupons thereto at their own cost and expense.

Dated at Santa Cruz, February 27, 1894.

COFFIN & STANTON.

Witness to signature:
Z. N. GOLDSBY.

I, J. L. Wright, city clerk of the city of Santa Cruz, do hereby certify that the foregoing is a true and correct copy of a contract filed in the office of the city clerk of the city of Santa Cruz, on the sixteenth day of April, A. D. 1894.

J. L. WRIGHT,

[SEAL.] *City Clerk of the City of Santa Cruz.*"

DEFENDANT'S EXHIBIT No. 2.

Contract.

"Defendant's Exhibit 2, August 4, 1897."

Upon motion, it was ordered that the contract of Coffin &
436 Stanton, to refund the city indebtedness, dated February 27, 1894, and accepted by the council April 16, 1894, be entered upon the minutes of the board, viz:

The City of Santa Cruz deciding to refund $225,000 in 5 per cent. bonds, $89,000 in 6 per cent. mortgage bonds, $39,000 municipal improvement bonds, with accrued interest thereon, total $360,000, into $360,000 in 5 per cent. refunding bonds of the denomination of $1,000 each, legally issued under the act of the legislature of the State of California, approved March 1, 1893, advertising the sale of same and in the event of the city not receiving satisfactory bids for such bonds at said sale, Coffin & Stanton agree to purchase said bonds, at par, and accrued interest, contracting with the city to assume all obligations of interest and principal on the bonds to be refunded, making the refunding an assured fact, from the date of the sale and delivery of the bonds to them. The funds derived from the purchase of the $360,000 in said bonds to be deposited with Coffin & Stanton to the credit of the funding fund, and to be used to take up and refund the outstanding bonds as above mentioned, Coffin & Stanton forwarding the same from time to time to the city for cancellation, charging such bonds to the funding fund at par (100), with interest to April 16 only.

Coffin & Stanton also agree to surrender and deliver to the city all bonds of the city, all bonds of the City Water Company outstanding over the above $89,000 above mentioned, and to surrender and assign to and release said city from all claims and demands against said city of Santa Cruz under their contract with said city for construction of water works.

In consideration of the above agreement, the city on its
437 part agrees to pay Coffin & Stanton 3 per cent. of the par value of the refunding bonds, in the event of the city availing itself of its terms on or before April 16, 1894.

Coffin & Stanton further agree to prepare and furnish said city with the blank bonds and coupons thereto, at their own cost and expense.

Dated at Santa —, February 27, 1894.

(Signed) COFFIN & STANTON.

Witness to said signature:
Z. N. GOLDSBY.

I, J. L. Wright, city clerk of the city of Santa Cruz, do hereby certify that the foregoing is a true and correct copy of the above and foregoing contract as spread upon the minutes of the common council of the city of Santa Cruz, as contained on pages 226 and 227 of volume 3 of "Minutes of Common Council;" said minutes being the minutes of said common council at a meeting held on the twenty-third day of April, 1894, which said minutes were approved by the mayor of said city and attested by the clerk of said city, on May 5, 1894.

J. L. WRIGHT,
[SEAL.] *City Clerk of the City of Santa Cruz.*

H. S. V. D.,
Notary Public.

Mr. Lindsay, one of the defendant's attorneys, then read in evidence the deposition of Jacob L. Wright, as follows:

JACOB L. WRIGHT, a witness called for the defendant, and duly sworn, testified as follows:

"I live in the city of Santa Cruz, California. I am city
438 clerk and city assessor of the city of Santa Cruz. I have occupied the official position of city clerk since the first of May, 1896. As such city clerk I have the custody of papers and contracts belonging to the city; and as such clerk I am also clerk of the common council of the city, and keep the records of that council.

I have in my possession what purports to be a contract between Coffin & Stanton and the city of Santa Cruz. This is the paper (producing it). I found it in a file box in the vault in the city clerk's office in the city hall at Santa Cruz, among the papers marked on the outside of the box 'Coffin & Stanton, refunding bonds.' It is now in the condition in which it was when I found it. I cannot leave the contract here to be annexed to my deposition, because the laws of the State of California require me to keep all public records and documents in my possession and under my control at all times during my term of office. I am personally liable on my official bond for neglect of duty, if I allow it to go out of my possession.

This document, marked 'Defendant's Exhibit 1,' of August 4, 1897, each page being initialed 'H. S. V. D., notary public,' is a true copy of the original contract which I have produced.

(It is stipulated that the said copy of 'Defendant's Exhibit 1' be annexed to the deposition in lieu of the original contract.)

This instrument, 'Defendant's Exhibit 2,' of August 4, 1897, each

page being initialed 'H. S. V. D., notary public,' is a correct copy of a contract as I find it recorded in the minute book. This transaction had been completed at the time that I became city clerk, in May, 1896. Personally I have no knowledge of these matters.
439 The record is in Mr. O. J. Lincoln's handwriting. He was city clerk at that time, and still lives in Santa Cruz. I have no knowledge from what document he made that record."

CLARENCE D. TURNEY, a witness called for defendant, being duly sworn, testified as follows:

I live at New Brighton, Staten island; I am thirty-five years of age; I was employed by Coffin & Stanton from April, 1881, to October 4, 1894. During the years 1893 and 1894, I was general office manager for the firm. I remember a transaction with Messrs. Prince & Company, of Boston, relating to the funding bonds of the city of Santa Cruz, California, while I was acting as such general office manager. Part of the transaction was in my charge.

In order to save constant objection and interruption, counsel for plaintiff was granted leave to enter a general objection to any question relative to what F. H. Prince may have said to any witness outside of the hearing of any member of the firm of E. G. & E. Wallace, on the ground that such questions were incompetent in this: First, that the fact of agency cannot be proven by the declaration of the agent, and second, that such question tended to contradict F. H. Prince, called as a witness by the defendant, without laying the foundation for impeaching him, by calling his attention on cross-examination to the time, place, and persons present, etc. It was understood that such objection was to be deemed as overruled, and an exception by the plaintiff noted.

(The witness, continuing, testified:) I was present at some
440 of the conversations between members of the firm of Prince & Co. and members of the firm of Coffin & Stanton. The parties engaged in the negotiation or transaction while I was present were Mr. F. H. Prince, of Prince & Co., and Mr. Walter Stanton, of Coffin & Stanton. In these conversations, Prince said that he represented a client whose name he did not disclose. The negotiations resulted in the forwarding of refunding bonds of the city of Santa Cruz to Messrs. Prince & Co., with a draft attached. The transaction which was concluded was that a certain amount of Santa Cruz refunding bonds were sold to F. H. Prince & Co., at a price I do not now recollect, for which we were to take part in cash, and part payment was to be made in the stock of the Page Belting Co. I do not remember the price at which that stock was to be taken by Coffin & Stanton. The transaction culminated in the sale to Prince & Co. of a certain quantity of these Santa Cruz refunding bonds, in payment of which Prince was to give a certain amount cash, and the balance of these Page Belting stock.

Q. As-between Coffin & Stanton and Prince & Co., what was the relation of Prince & Co.?

This question was objected to by the plaintiff as incompetent, as calling for the legal conclusion of the witness.

The objection was overruled, and an exception taken.

A. Principal in the transaction. The only party whom we knew in the transaction was F. H. Prince & Co. Mr. Prince, so far as I ever knew, did not disclose who he was acting for. It is not customary for a broker to disclose his confidential relations with clients any more than a lawyer. I was not informed for whom he was acting. In the course of the negotiations, and before the
441 transaction was completed, papers and documents were delivered to Prince & Co. They were selected by Mr. Stanton and myself, and either forwarded by me, or under my supervision, to F. H. Prince & Co. I am very positive about that. I recognize the papers contained in the package marked "Santa Cruz refunding bonds. Full transcript of proceedings *in re* issue." I am very familiar with those papers. The package of papers sent to Prince & Co. was either this batch of papers, or an original duplicate batch. It was customary for Coffin & Stanton, when purchasing bonds, to have copies of an original paper to be used in a case of this kind, when they disposed of bonds, and it was so in this case.

In the package of papers sent to Prince & Co., the notice of special election, headed "Notice of special electi- to the qualified electors of the city of Santa Cruz, and to all whom it may concern," was included.

In connection with the testimony of this witness, said package of papers, comprising:

(1) Copy of ordinance No. 314; (2) copy of ordinance No. 315; (3) copy of ordinance No. 317; (4) copy of ordinance No. 318; (5) copy of ordinance No. 320; (6) copy of notice of sale of bonds, dated March 28, 1894, signed O. J. Lincoln, city clerk of said city of Santa Cruz; (7) affidavit of O. J. Lincoln, dated March 15, 1894, showing posting of notice of a special election to be held in said city of Santa Cruz on the thirteenth day of March, A. D. 1894; (8) copy of notice of special election; (9) certificate of O. J. Lincoln, city clerk, to the correctness of copies of other papers contained in package.

442 All of which papers are marked with the seal of the city of Santa Cruz.

Embodied in said copy of notice of special election is the following: "(2) Eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893) of the corporation the City Water Company of Santa Cruz, heretofore issued by said corporation, the City Water Company of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand dollars ($1,000) each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are secured by a mortgage or deed of trust upon the property known as the city water works of the city of Santa Cruz, executed by the City Water Company of Santa Cruz as party of the first part therein, to the Holland Trust Company, of New York, as trustee, party of the second part therein, and which said bonds outstanding were, at the time of the conveyance by the City

Water Company of Santa Cruz to the city of Santa Cruz of the property known as the city water works, and now are, a valid lien and charge upon said property known as the city water works, and became thereby a part of the bonded indebtedness of the city of Santa Cruz."

The papers sent to F. H. Prince & Co. contained the certificate of O. J. Lincoln, city clerk of the city of Santa Cruz, dated twenty-fourth of April, A. D. 1894, and in the package of papers sent to F. H. Prince & Co., either that certificate, or a duplicate original, was contained.

At this point certain papers were exhibited to the witness as follows:

443 (1.) Certificate of O. J. Lincoln, as follows:

"SANTA CRUZ, CAL., *April* 27, 1894.

STATE OF CALIFORNIA, } ss:
County of Santa Cruz, City of Santa Cruz, }

I, O. J. Lincoln, city clerk of the city of Santa Cruz, State of California, do hereby certify that, to the best of my knowledge and belief, the present population of the city of Santa Cruz will exceed 6,500.

Attest my hand and the seal of said city this twenty-seventh day of April, 1894.

O. J. LINCOLN, *City Clerk.*

(Seal of city of Santa Cruz attached.)".

(2.) The following "statement of the population and valuation of the city of Santa Cruz:"

"Present population, 6,500. With the annexation of East Santa Cruz, which is probably about 1,500, would be added, making a total population of 8,054.

Assessed valuation in 1893	$3,907,404
Real valuation	8,100,000
Real valuation of East Santa Cruz (estimated)	540,000
Total valuation	$8,640,000
Total bonded debt	360,000

Floating debt, none.

The annexation of East Santa Cruz would not increase the debt."

There was added to such statement the certificate of O. J.

444 Lincoln, city clerk of the city of Santa Cruz, that said statement was true and correct according to the best of his knowledge and belief.

(The witness continued:) I have seen those papers before; either they or duplicate originals were a part of the papers sent to Prince & Co.

(The papers were then read in evidence.)

(The witness continued:) There was an agreement in writing between the city of Santa Cruz and Coffin & Stanton. I do not think

that agreement was among the papers sent to Prince & Co. Mr. Prince, in the course of the conversation between him and Mr. Stanton, stated that he desired the papers which were afterward sent him for submission to Messrs. Story & Thorndyke, attorneys.

During my examination, I have testified: "The transaction was concluded and refunding bonds of the city of Santa Cruz were forwarded to Messrs. Prince & Co. with a draft attached." I will explain what I mean by "a draft attached" as follows: The firm of Coffin & Stanton had sold quite a large amount of these bonds to Prince & Co., and they were not all obtainable at one time, and we sent them in such lots as were available, with drafts attached to them for the amounts of such bonds, and placed them in the bank for collection, and drew upon them by a draft for the amount of the bonds sent.

WALTER STANTON, recalled on behalf of the defendant, testified as follows:

Q. What relation did the firm of Prince & Co. have with the firm of Coffin & Stanton, if any, in the matter of the sale of the Santa Cruz refunding bonds?

445 The question was objected to by the plaintiff as incompetent, in that it called for the conclusion of the witness.

The objection was overruled, and an exception taken by the plaintiff.

A. They were principals.

Q. Were they your agents?

Same objection, same ruling, and exception taken.

A. No, sir.

(The witness, continuing, testified:) The sale of the bonds was made to F. H. Prince & Co. So far as the firm of Coffin & Stanton were concerned, we never heard of any one else in connection with the transaction. It is my best recollection that Mr. F. H. Prince did not disclose the name of his client in any interview he had with us. We were not clients of F. H. Prince & Co. in this transaction. Our office manager, Mr. Turney, had charge of the matter of sending to Price & Co. the papers relating to the Santa Cruz refunding operation. I instructed him to send the Santa Cruz papers to F. H. Prince & Co., of Boston. Those papers were all kept in one package, and, when I stated the "Santa Cruz papers," I meant all papers in connection with the Santa Cruz bonds.

I remember that Mr. Prince stated that the papers had been placed in the hands of an attorney, and since hearing the recollection of Mr. Turney, it is my impression that Mr. Prince stated Story & Thorndyke. I obtained from the City of Santa Cruz the full record of proceedings with the papers giving the assessed valuation and calculation, and all ordinances, etc., that had been passed in relation to the refunding bonds, and they were certified to by

the city clerk, Lincoln, and those papers were undoubtedly
446 in the package endorsed as the "Santa Cruz papers," and which I directed Mr. Turney to send to Boston.

(On cross-examination, the witness testified:) When I stated that the relations of the firm of Prince & Co. with the firm of Coffin & Stanton, in the matter of the sale of the Santa Cruz refunding bonds, was that of "principal," and that Prince & Co. were not our agents, I was answering to the best of my recollection.

At this point the witness was handed a letter, which letter read as follows:

"Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *Sept.* 24, 189–.

Messrs. F. H. Prince & Co., 2 and 8 State street, Boston, Mass.

GENTLEMEN: We have to acknowledge yours of the twenty-second inst., reporting to us the trade which you have arranged for us with Messrs. E. & E. G. Wallace. We hereby confirm that trade, and agree to deliver $150,000 City of Santa Cruz, Cal., bonds at par, of the earliest date of maturity which we hold, and $150,000 City of Ironwood, Mich., 6 per cent. at 105 and interest, we to satisfy Judge Dillon, or some other lawyer satisfactory to you, of the legality of these bonds, and furnish a legal opinion from him to that effect. We agree to take in part payment of the above bonds 520 shares of common and 350 shares of preferred stock of the Page Belting Co., at 85 per cent. of their par value, as follows: Half of said
447 stock on delivery of $150,000 City of Santa Cruz bonds, together with cash for the balance of the purchase-money for said bonds, and the other half of said Page Belting Co. stock on delivery of the $150,000 City of Ironwood bonds. And we further agree to deposit with you $10,000 City of Waco, Texas, first-mortgage water company 6 per cent. bonds, and the 435 shares of Page Belting Co. stock received by us on delivery of the $150,000 of the City of Santa Cruz bonds, as surety that we will perform the above agreement in full, and by delivery — $150,000 City of Ironwood bonds on the conditions above named, and receiving the remaining one-half of the Page Belting Co.'s stock—that is, 435 shares as part payment therefor. $150,000 City of Santa Cruz bonds are to be delivered on Tuesday next.

Very truly yours, COFFIN & STANTON."

(The witness continued:) The letter which you have handed me bears the signature of Coffin & Stanton. To my best recollection, I have never seen that letter before.

The letter was then read in evidence on behalf of the plaintiff.

(The witness continued:) The signature to that letter is Mr. Coffin's. I did not write that letter, and have no recollection that I ever saw it before. I think that some of the negotiations between Prince and Coffin & Stanton were carried on between Mr. Prince and Mr. Coffin. I have no recollection that I have ever seen the letter of Prince & Co. of the twenty-second, referred to in this letter.

If I had received that letter that you mention from Prince &
448 Co., advising us of the contract they had made in reference to the Santa Cruz bonds, I would probably have answered it and signed it. I have no recollection of any such arrangement as that Mr. Prince testified to in substance, that I arranged with him over the telephone to pay him, as a commission for the sale of the $150,000 Santa Cruz bonds, one-half of the profits, if any, which were obtained on the Page Belting Company's stock.

The following question was then asked the witness:

Q. Do you recollect any arrangement by which you were to pay Prince, as a commission for placing the Ironwood bonds, half of the profits of the interest money on those bonds?

To which question defendant objected on the grounds that it was entirely irrelevant and incompetent, and had nothing to do with the case.

The objection was by the court overruled; to which ruling of the court defendant duly excepted, and the witness answered: "There must be some paper in existence showing the exact relations of Coffin & Stanton and F. H. Prince & Co. in this matter. This transaction was carried on some four years ago, and at a very anxious and worried time for the firm of which I was a member, and as to my recollection of these various bonds that you refer to, it is very difficult for me to form an absolute recollection of any one bond excepting just the best I can by groping at it. On my direct examination I stated the best that I could remember. Now, when you call for these different bonds, it is absolutely impossible for me to remember."

(The witness continued:) To the best of my recollection,
449 Prince & Co. were not our agents. It is not a belief; it is a recollection in regard to it. I heard Mr. Turney testify; and Mr. Turney had charge of the details, and it led my mind to that way of thinking. The recollection was that Mr. Prince did not act as an agent. He acted as a principal. Even now, with this letter before me, I do not remember the name of Wallace. I knew that Mr. Prince had a customer for those bonds. I recollect very distinctly about that on reading the letter that you handed me.

Of the facts on which I base my conclusion that Prince was not our agent, the first that impressed me was that I have no recollection of any transaction in which Mr. Prince was our agent prior to this. So far as I can remember, that has the strongest bearing upon my recollection. If he acted as our agent in this matter, it was an individual case. I cannot say that I have any recollection of any facts, one way or the other.

My statement in my redirect examination that Prince was not acting as our agent is based on Mr. Turney's testimony and the fact that I cannot recollect that Prince acted as our agent in any other case. I have no recollection of any agreement with Prince & Co. by which we were to pay them half of the profits of the interest money on the Ironwood bonds, as their commission for placing the bonds.

The witness was then asked the following question by counsel for plaintiff:

Q. I ask you whether you recall receiving a letter from F. H. Prince & Co., as follows:

450 "SEPTEMBER 22, 1894.

"Coffin & Stanton, 72 Broadway, New York:

"You agreed with us last night that we should divide the interest of Ironwood bonds, and you must stand by it.

F. H. PRINCE & CO."

To which question defendant objected on the grounds that the same was irrelevant and incompetent; which objection was by the court overruled; to which ruling the defendant then and there duly excepted, and the witness answered: "I have no recollection. I was away from the city at the time that letter was sent."

(The witness then continued:) I do not know that this transaction was closed on September 22.

The witness was then asked the following question by counsel for plaintiff:

Q. Have you any doubt, from the examination of letter signed by your partner, marked "Plaintiff's Exhibit 1," "of this date," that the transaction was closed, at that date, September 22 or 23; should you not say that the contract was closed on that day?

To which question the defendant objected on the ground that the same was incompetent; which objection was by the court overruled; to which ruling of the court defendant then and there duly excepted; and the witness answered "Yes."

(The witness continued:) I do not remember whether I was in town or not at the time the contract was made. The various interviews between Mr. Prince and myself in reference to these
451 negotiations took place over the telephone, I think. I have an indistinct recollection that there was one, or perhaps two, personal interviews between Mr. Prince and myself at my office. I recollect that Mr. Prince said that he was to give the papers to an attorney; and then Mr. Turney states that the attorney was Story & Thorndyke. That conveys an impression to me that it probably was Story & Thorndyke, as far as I could remember. I have no definite recollection to the effect that Prince said to me he wanted those papers sent to Story & Thorndyke, but my impression is that he did.

Mr. Prince said nothing to me about obtaining Mr. Dickinson's opinion. If it is a fact that Mr. Prince did take in Mr. Dickinson, and wanted the papers for that purpose, that fact would not change my impression that Messrs. Story & Thorndye's name was used, because Mr. Dickinson might have been taken in in addition. I think that Mr. Prince made the statement about the use he desired to make of those papers over the telephone. I am not positive. As far as I recollect, all that he said at that interview was that he wanted additional papers given to his attorney, and that is all that I absolutely recollect, although it is my impression that he said he

wanted them for Story & Thorndyke. I do not know who has the letters and papers of Coffin & Stanton. Thomas P. Wickes is their present receiver.

The plaintiff here offered in evidence a copy of a letter from F. H. Prince & Co. to Coffin & Stanton, dated September 22, 1894, as follows:

452 "SEPTEMBER 22, 1894.

"Coffin & Stanton, 72 Broadway, New York:

"You agreed with us last night that we should divide the interest on Ironwood bonds, and you must stand by it.

"F. H. PRINCE & CO."

The defendant objected on the ground that the evidence is inadmissible, irrelevant, immaterial and incompetent. Thereupon the court overruled the said objection; to which ruling the defendant duly excepted; and the letter was read in evidence.

On redirect examination the witness stated as follows: Prior to this transaction, the firm of Coffin & Stanton had no interest whatever in the Page Belting stock, and whatever dealings there were as to the sale of the Page Belting stock were not made in our behalf. We had no interest in that whatever, in any shape or form. The offer to give us Page Belting stock was necessarily made by Prince, either as the owner, or representing the owner. In no possible aspect could Prince have been the agent of Coffin & Stanton in the sale of the Page Belting stock.

CLARENCE D. TURNEY, recalled, on recross-examination stated: My understanding of Mr. Prince's statement was that he represented a client who was to purchase bonds of Coffin & Stanton. He mentioned the Page belting stock, which was to be part of the consideration for the bonds sold by Coffin & Stanton. This conversation took place in the private office of our firm. I have no definite knowledge as to how long before the contract was signed it occurred, as I do not know when the contract was signed, or
453 that a contract was signed. On that particular occasion I was present at the whole conversation. The transaction for the sale of these bonds had been concluded between the members of the firm of Coffin & Stanton and Mr. Prince, and as I was the office manager, in charge of many details of the firm's business, I was called in at that conference so as to understand the nature of the transaction, and in order that I might see that the details were fully carried out. The conversation related to the amount of bonds that were sold, the price at which they were sold, and the consideration therefor, which was composed—I cannot remember the whole conversation, or any part of it verbatim. Mr. Stanton outlined the nature of the transaction with Mr. Prince, and stated to me that they sold a certain amount of City of Santa Cruz refunding bonds to F. H. Prince & Co., at a price which I do not at this moment recollect; and that a certain amount of it was to be paid in cash; that the bonds were to be partly in the stock of the Page Belting Com-

pany at an agreed price; instructing me to arrange to get the bonds and deliver them to F. H. Prince & Co., drawing upon them for such amounts as were due Coffin & Stanton; and also instructed me to get up the necessary papers touching upon the issue of these bonds. That was the substance of the conversation I had with the firm, with Mr. Prince present. I cannot state positively that at that meeting Mr. Prince made any statement that he represented a client. If I stated a short time ago that it was at that meeting that Mr. Prince made the statement with reference to a client, I wish to correct the statement. There were a number of meetings between Mr.
454 Prince and the firm. At some of the meetings I was called in for some purpose or other, but I would only be there a few minutes, perhaps. I heard Mr. Prince state to the firm at one of these meetings that he represented a client in the purchase of the bonds.

I have never seen "Plaintiff's Exhibit 1 of this date" until today. I have no recollection whether the final letter setting forth this trade was shown to me, so that I might draft the papers, or for any other purpose. If there had been a contract, which there doubtless was, I would have had access to it in order that the details may have been perfected.

If this letter ("Plaintiff's Exhibit 1" above referred to) was the only contract, it would not necessarily have passed through my hands. Mr. Prince called at the office very frequently about that period. I presume that it was in connection with this transaction. I was present at two or three of the interviews held in reference to this transaction. I don't recollect any conversation between Mr. Prince and either Mr. Coffin or Mr. Stanton in which anything was said as to Prince's receiving, as a commission for sale, a portion of the profits that Coffin & Stanton might make on the Page Belting stock, nor any conversation in which anything was said about their division of the interest on the Ironwood bonds. This letter of November 22, from Prince & Co. to Coffin & Stanton, which you now show me, I have not the slightest recollection of, nor of its subject-matter.

I stated on my direct examination that the only party whom I knew in the transaction was Prince & Co. It was my belief
455 and understanding that Mr. Prince bought them for a customer. This belief was based upon what he said.

It was to Prince & Co. that we looked for our pay; that is, for the payment for the bonds and consummation of the transaction; and it was on Prince & Co.'s responsibility that we relied. I identified several papers that were forwarded *to* me to Prince & Co. on my direct examination. There was a printed transcript of the proceedings had, several certificates of the city of Santa Cruz relating to the issue of the bonds, also several certificates executed by O. J. Lincoln, who then was city clerk of Santa Cruz.

That is all that I have any recollection of without looking at the papers.

I remember what papers were sent, because I handled those several papers on a number of occasions in connection with those bonds.

I knew they were regarded as a set of papers relating to the issue of those bonds, and to the best of my recollection at the present time those papers were considered as a set of papers relating to the issue of those bonds. Another thing, they were unusual, those papers. Ordinarily, papers relating to the issue of bonds were typewritten, or were gotten up in manuscript form. These were the first set of papers in my experience on the street that were gotten up in just that form. It therefore made a great impression. Speaking for myself personally, my impression is that I did not receive the papers that I sent to Prince & Co. back again.

It was in a general conversation that I heard Mr. Prince remark that he desired the papers for submission. This remark was made at the conference which I have previously attempted to give the whole of; and this was something that I did not remember
456 when I tried to give the whole. I can't state definitely just what he said about that, further than the statement was identically made that those papers were forwarded to be submitted to Story & Thorndyke. The papers were mailed to him.

Q. Did you mail them yourself?

A. No.

Q. Did you see them mailed?

A. I told——

Q. Did you see them mailed?

A. No, sir; I did not.

Q. Did you hear anything at that time said about Mr. Dickinson?

A. No; I never heard Mr. Dickinson's name.

On redirect examination the witness stated: In speaking of this transaction, Mr. Prince spoke "of my customer." I never knew until my examination who the customer was. He stated that the transaction was for a customer of his. It is my recollection that before Coffin & Stanton sold these bonds to Prince & Co., Prince & Co. had arranged the matter of the sale with their customer. The bonds were not sold by Prince & Co. on behalf of Coffin & Stanton to the customer of Prince & Co. My understanding is based upon what occurred in my presence and in conjunction with the frequent instructions I received. Papers, of which we had a great number, were selected generally by Mr. Stanton and myself, and such papers as we thought essential to establish the title of the bonds were selected to be forwarded to F. H. Prince & Co., according to their previous instructions. Among such papers I am confident that "Exhibit A," or another original copy of same, was sent; also two certificates signed and executed by O. J. Lincoln, city clerk of Santa Cruz, in connection with the valuation, population, and giv-
457 ing other statistics of the city. I am positive that a special election notice, as I before testified, was among them. I refer to this special election notice in "Defendant's Exhibit A" of October 12, 1897, or one exactly like it. I am positive of that.

On cross-examination by Mr. Cobb, on behalf of the plaintiff, the witness stated: Yes, I am pretty familiar with the dealings of Coffin & Stanton and the city of Santa Cruz. I had a very good

general knowledge of the relations between the city and the firm. I selected the papers to be sent to Prince & Co., which in my judgment sustained the title to the validity of the bonds. I don't know that at the time I took any special notice that it was stated in the election notice that the bonds were to be used for refunding the bonds of a private water company. I know the election notice was in that batch of papers, and they were all tied together, and I regarded that batch as necessary papers. The papers had been received prior to that by attorneys for the firm; and these papers were a set of papers that were very thoroughly impressed upon me at the time, and I bore it in mind. When I had the papers sent to Prince & Co., I had no knowledge of the merits of the papers at all.

On redirect examination the witness stated: It is a fact that I sent those papers because the attorneys of the firm in New York placed them in a set.

At the conclusion of the reading of this deposition, the defendant offered in evidence all the exhibits attached by the notary to the depositions, which exhibits are above referred to, and they were considered read.

458 FREDERICK H. PRINCE, a witness called on behalf of the defendant, testified as follows: My name is Frederick Henry Prince. I live at the city of Boston, and am a banker. In 1894 I had dealings with the firm of Coffin & Stanton, of New York, in respect to the refunding bonds of the city of Santa Cruz, California. Those dealings were as agent for Coffin & Stanton. I sold for Coffin & Stanton 150 bonds to E. G. & E. Wallace. The bonds were of the par value of $1,000 each, and represented $150,000. They were the 5 per cent. refunding funds of the city of Santa Cruz. I did not buy those bonds on behalf of myself or my firm. On September 22, 1894, I sold them to E. G. & E. Wallace. I had been negotiating the sale with Messrs. E. G. & E. Wallace for two or three weeks before the sale was consummated. During that time the bonds were in the possession of Coffin & Stanton, I suppose. They were not in my possession. I had not paid for the bonds before the sale to Messrs. Wallace was completed. As I remember it, at the time the sale was completed, Wallace paid me a certain sum of money, and Coffin & Stanton drew on me the same day for part of the bonds.

I was the agent of Coffin & Stanton, and if there was any profit I was to receive a profit, if there was any in the transaction. I was to share in any profit that Coffin & Stanton made in that transaction. I was to get a share of what profit there was in the disposition of the Page Belting stock, which was taken in part payment, you understand, for those bonds.

We sold the bonds at par, and Coffin & Stanton took Page
459 Belting stock at 85 per cent. from the Messrs. Wallace, who paid the difference in cash—the difference between 435 shares of Page Belting stock taken at 85, and 150 Santa Cruz bonds at par and interest.

E. G. & E. Wallace paid us $16,400, and the balance, $100,000

we loaned them on the Santa Cruz bonds; which $100,000, with the $16,400, was paid over to Coffin & Stanton. We were to receive for our compensation a certain share of any profits that would be realized by Coffin & Stanton on the sale of this Page Belting stock above 85, at which they took it. We were paid $2,500 by E. G. & E. Wallace for selling the Page Belting stock and for other services in connection with the transaction. I suggested to the Messrs. Wallace that they buy the Santa Cruz bonds, and they authorized me to buy them. I stated to them that Coffin & Stanton in New York, I thought, were hard up for money, it being then in the middle of one of our panics, and I thought that by advancing this amount of money he could get them to buy this manufacturing stock in exchange. Messrs. E. G. & E. Wallace had spoken to me previously about selling that Page Belting stock before I broached this purchase of the Santa Cruz bonds, and they had told me I could sell the belting stock if I could. My impression is that the Page Belting Company was a New Hampshire corporation, and that the Messrs. Wallace were stockholders in it. It is a very well known concern in the city of Boston.

These negotiations commenced some time in July, and culminated in September. Coffin & Stanton made inquiries in regard to the Page Belting stock on their side, and then the transaction, being so large in size as that, would necessarily take a considerable
460 time. The loan of $100,000 to Messrs. Wallace was made at their request and was a condition of our making the transaction. It is my business to loan money. I received no security from Messrs. Wallace for this loan of $100,000. I held the bonds of security for it. Messrs. Wallace gave their note for $100,000 with the bonds as collateral. That was an ordinary promissory demand collateral note. I don't know whether the Messrs. Wallace made any inquiry as to the legality or validity of the Santa Cruz bonds. We employed attorneys to make investigation, and to give an opinion as to the legality of the bonds. We employed Mr. M. F. Dickinson. Story & Thorndyke were our private counsel, and they were called upon by us to investigate into the legality of these bonds, and to give an opinion. During the long negotiations between July and September, the Messrs. Wallace asked us whether we had called upon any attorneys for their opinion as to the legality of these bonds. It is always customary, in a sale of bonds, to give a lawyer's opinion that the bonds have been properly examined; and in this case I think there were three opinions. Messrs. Wallace asked us what opinion we had in regard to the bonds being properly issued, and we gave them Mr. Dickinson's opinion, and also the opinion of some lawyer in New York, whose name I do not recollect, and also the lawyer out in California. Coffin & Stanton sent us all the papers relating to the issue of these Santa Cruz refunding bonds, and we submitted them to Mr. Dickinson, whom we consulted before we consulted Story & Thorndyke.

I do not remember what papers we received from Coffin & Stanton and handed over to these attorneys, but I know
461 Coffin & Stanton always sent a very full set of all papers, you understand. And in this case, as I remember it, there

was a very full set of papers—votes and so forth. I couldn't swear positively, but it is my impression that all the ordinances of the city of Santa Cruz, the advertisement and the contract with Coffin & Stanton, were submitted. They were very careful to send all the papers. That is my best memory.

I have looked at the papers which you now hand to me purporting to be copies of the contract between the City of Santa Cruz and Messrs. Coffin & Stanton. They were not among the papers sent to us. I never saw them before. This contract was not among the papers. This is the first time I have ever seen it. I have read both of them here, but I never saw either of them before. I am positive of that. It is my best memory that a contract between the City of Santa Cruz and Coffin & Stanton was among the papers, but it was not that contract. I cannot tell you in what way it differs. This is the first time I have seen these two contracts, or the copies of the contracts, or the conditions connected with the same.

Q. You see, Mr. Prince, that one paper which I will now have marked "Exhibit A for identification," and which you looked at a few moments ago, purports to be certified by the city clerk as "a true and correct copy of a contract filed in the office of the city clerk of the city of Santa Cruz on the sixteenth day of April, A. D. 1894," which contract is between Coffin & Stanton and the City of Santa Cruz. Does that refresh your memory?

A. I never saw this contract, and never knew of it. I
462 never saw the original, and never saw the copy. And the other paper which you hand me, marked "Exhibit B," for identification, and certified by J. L. Wright, city clerk of the city of Santa Cruz, to be a true and correct copy of a contract spread upon the minutes of the common council of the city of Santa Cruz, as contained on pages 226 and 227 of volume 3 of minutes of the common council, was never seen by me before, neither the original nor a copy.

I do not remember that anything was said to Messrs. E. G. & E. Wallace that these refunding bonds had been issued to take up the bonds issued by a private water corporation. I received an opinion from Messrs. Story & Thorndyke as to these bonds, which opinion was in writing. The opinion was not that they were not legally issued. I do not know what has become of that opinion. I have made a general examination of my papers and cannot find it. I had correspondence with Messrs. E. G. & E. Wallace with reference to these bonds, and the letters are at my office.

It is customary in selling bonds to give a Boston lawyer's opinion in reference to the same. The opinion of the Californian lawyer and the New York lawyer were sent to me with the papers by Coffin & Stanton. I think Dickinson gave us his opinion, and then we called on Story & Thorndyke, our private lawyers, for their opinion. After we originally got papers from Coffin & Stanton in connection with these Santa Cruz bonds, Dickinson asked for certain papers, which were sent for to Coffin & Stanton, and they sent them to us. That was subsequent to the first papers sent us, and

before Dickinson gave his opinion. As I remember it, he
463 asked for some papers, that we sent for them, and they were given to him. Coffin & Stanton supplied us with all the necessary sworn statements of all kinds and descriptions. What I mean is, Coffin & Stanton supplied us with a number of papers. Story & Thorndyke were our regular paid solicitors, and sent their bill in quarterly.

On cross-examination the witness stated: I do not remember or recollect any conversation with Messrs. E. G. & E. Wallace in reference to the matter that these bonds were given to refund the bonds of a private water company.

We were to be paid by Coffin & Stanton, as compensation for our services in placing these bonds, one-half of the profit made by Coffin & Stanton on the Page Belting stock, if any, over and above $85 a share. I think I am right. I don't know whether it is a half or a third. In this transaction, that was the only compensation we were to receive from Coffin & Stanton. We were not to receive a part of the profits of Coffin & Stanton on the sale of the Santa Cruz bonds; none whatsoever, I am sure about that. Whatever profit there was to Coffin & Stanton on the sale of those bonds was to have gone entirely to them.

I have an impression—it is only an impression—that there was some contract among the papers originally sent us by Coffin & Stanton between the City of Santa Cruz and Coffin & Stanton. I know that Coffin & Stanton always sent over papers, that were always sworn to, of all sorts and nature, and there was a number of papers, and my impression is that the contract with the city was there. A sworn statement was what they always sent over.
464 They had a notary in their office, and he always swore to everything.

On redirect examination the witness stated: We received $2,500 compensation from the Messrs. Wallace for the sale of the belting stock. I told Messrs. Wallace that I had received an opinion from Mr. Dickinson, and from lawyers in New York, and from Story & Thorndyke, and a lawyer in California, with reference to the legality of these bonds.

At this point the witness stated as follows: I would like to correct a piece of my testimony that was given this morning, and that was: I said I had an opinion from Story & Thorndyke in regard to the bonds. As a matter of fact, as I now recollect, I never had an opinion from Story & Thorndyke in regard to the bonds, no written opinion. I had a letter of inquiry which I have hunted for and cannot find. I have no recollection whatever as to the contents of that letter. I have brought with me copies from our letter book of all letters written by us to the Messrs. Wallace and received by us from them relating to this transaction; and these letters which I now produce are correct copies.

The letters referred to by the witness are now offered and read in evidence as follows:

"BOSTON, *August* 31, 1894.

Messrs. E. G. & E. Wallace, Rochester, N. H.

GENTLEMEN: As instructed by you, we have negotiated with Messrs. Coffin & Stanton to sell to you the $360,000 City of
465 Santa Cruz, Cal., 5 per cent. bonds, dated April 16, 1894, at par and interest, they agreeing to accept, in payment therefor, 350 shares of Page Belting Company preferred stock at par; 520 shares of Page Belting Company common stock at 85, and the balance in cash. The legality of this issue of bonds has been passed upon by Mr. M. F. Dickinson, Jr., of the law firm of Messrs. Hyde, Dickinson & Howe, the attorneys of the American Loan & Trust Company, and we enclose his written opinion, which kindly return to us for our files. Please notify us when it will be agreeable to you to carry through the transaction. Our charge to you for services in this matter will be $2,500, as already arranged with Mr. Summer Wallace.

Very truly yours, F. H. PRINCE & CO."

"BOSTON, *Sept.* 22, 1894.

Messrs. E. G. & E. Wallace, Rochester, N. H.

GENTLEMEN: We enclose herewith copy of letter to Messrs. Coffin & Stanton explaining the trade which we have made for you with them. You are to pay us $2,500 as agreed, for our services to you in this matter.

Very truly yours, F. H. PRINCE & CO."

"SEPT. 22, 1894.

Messrs. Coffin & Stanton, New York, N. Y.

GENTLEMEN: We have arranged a trade for you with Messrs. E. G. & E. Wallace, as follows: We have sold $150,000 City
466 of Santa Cruz, Cal., bonds at par, you to deliver the bonds of the earliest date of maturity which you hold, on Tuesday next, and $150,000 City of Ironwood, Mich., 6 per cent. bonds at 105 and interest, you agreeing that the legality of the City of Ironwood bonds shall be satisfactory to Judge Dillon, and a legal opinion obtained from him to that effect, and if not from him, from such a lawyer as may be agreeable to us. You are to take in part payment of the above bonds 520 shares of common and 350 shares of preferred stock of the Page Belting Co., at 85 per cent. of its par value as follows: Half on delivery of $150,000 City of Santa Cruz bonds, and the other half on the delivery of the $150,000 City of Ironwood bonds, you to deposit with us $10,000 City of Waco, Tex., first-mortgage water Co. 6 per cent. bonds, and the 435 shares of Page Belting Co. stock received by you on delivery of $150,000 City of Santa Cruz bonds, as surety that you will perform in full the above agreement in delivering the $150,000 City of Ironwood bonds on the conditions above named, and receiving the remaining one-half of the Page Belting Co. stock, that is, 435 shares, as part payment thereof. The balance of purchase-money for each lot of bonds is to be paid in cash on the delivery of bonds.

Please confirm the trade by signing the enclosed letter and returning same to us forthwith.

Very truly yours, F. H. PRINCE & CO."

467 "OCTOBER 16, 1894.

Messrs. E. G. & E. Wallace, Rochester, N. H.

GENTLEMEN: As we telephoned you today, we should like to have you pay us on Friday, the nineteenth inst., $50,000 on account of your demand loan on Santa Cruz bonds. We have had a loan on these bonds called, and, as we have large payments to make at the present time, we shall need this money.

We note you will call on us Friday.

Very truly yours, F. H. PRINCE & CO."

"OCTOBER 17, 1894.

Messrs. E. G. & E. Wallace, Rochester, N. H.

GENTLEMEN: We have your favor of the sixteenth inst., and note that you do not wish to do anything in this matter until the return of Mr. Summer Wallace. Our understanding with him was that we were to loan this money on demand, and as we have large payments to make the last of the week, we should like at least $50,000 on Friday. If you cannot pay us this amount, please pay us $25,000, and let the balance go until the first of next week.

Very truly yours, F. H. PRINCE & CO."

"ROCHESTER, N. H., *August* 5, 1894.

F. H. Prince, Boston:

468 Don't care to make trade less than par all around, both common and preferred.

E. G. & E. WALLACE."

On recross-examination the witness stated:

The statement that I did not state to Messrs. E. G. & E. Wallace anything about Story and Thorndyke's opinion is correct:

On redirect examination the witness stated:

By Mr. DITTENHOEFER:

Q. Now, what is it you wish to have understood as to your answer, that you did not inform the Messrs. Wallace that you received an opinion from Story and Thorndyke, or merely that you did not inform them that they had given you an opinion that the bonds were illegal?

A. I want to have understood that I do not remember to have informed Messrs. E. G. & E. Wallace that I had an opinion from Messrs. Story and Thorndyke, and also that I distinctly remember that I did not inform them that Story and Thorndyke had given me an opinion that the bonds were illegal, because they did not do so.

The defendant here moves to strike out from the last answer the

words "because they did not do so" as not being responsive to the question. The motion to strike out was by the court denied and an exception duly taken by the defendant.

(The witness, continuing:) Story and Thorndyke did not give us any opinion. I can say that they gave me no opinion that the bonds were illegal, because they did not give me any opinion on them anyhow. They did not give me any opinion as to
469 whether they were legal or illegal. I conferred with them as to the bonds, but had no opinion from them as to their legality or illegality.

WILLIAM H. FLEMING, a witness on behalf of defendant, testified as follows:

My name is William H. Fleming; I live at Cambridge, and I am a clerk for F. H. Prince & Co., having been with them twelve years. I have no interest in the business. I remember that there was a transaction between F. H. Prince & Company, and Coffin & Stanton and Messrs. E. G. & E. Wallace in the year 1894. I don't remember any particular part that I took in such transaction. I may have, but I don't remember. During the time I remember seeing either one or both of the Messrs. E. G. & E. Wallace at the office of F. H. Prince & Company some time between July and September. I found an entry on the books of F. H. Prince & Company relating to the transaction ceoncerning the sale of the Santa Cruz refunding bonds to Messrs. E. G. & E. Wallace.

Q. Does the entry correspond with the testimony given by Mr. Prince?

Objected to by the plaintiff as immaterial; which objection was by the court sustained; to which ruling of the court sustaining the objection the defendant duly excepted.

Q. Will you please turn to the page of that book containing the entry and read the entries?

Objected to by the plaintiff as immaterial; which objection was by the court sustained; to which ruling of the court sustaining the objection defendant duly excepted.

The entry referred to was as follows:

470 Page 952, Stock Ledger No. 4.

E. G. & E. Wallace.

1894.		
Sept. 22.	8 per cent. Page Belting Co. rec'd.	
25.	150,000 Santa Cruz, 5's, 100	$150,000
	Int. at 5, 162 days	3,375
	Comm. F. H. P. & Co., as ag'ts	2,500
		$155,875

1894.

Sept. 25.	435 Page Belting Co., 85	$36,975
	Demand loan	100,000
	C'k	18,900
		$155,875

Mr. FLEMING:

Q. What does the word "rec'd," on the first line, mean—"received"?

Counsel for plaintiff objected to the question on the ground that the same was immaterial. The court sustained the objection, to which ruling defendant then and there duly excepted.

Q. What does the figure "5" and the letter "s" after "Santa Cruz" mean?

Council for plaintiff objected to the question on the ground that the same was immaterial. The court sustained the objection, to which ruling defendant then and there duly excepted.

Q. What does "5's" mean?

Council for plaintiff objected to the question on the ground that the same was immaterial. The court sustained the objection, to which ruling defendant then and there duly excepted.

471 Q. The words "int. at 5 162 days," on the third line—what does that mean?

Counsel for plaintiff objected to the question on the ground that the same was immaterial. The court sustained the objection; to which ruling defendant then and there duly excepted.

Q. The words "comm. F. H. P. & Co. as ag'ts"—what does the word "comm." mean? Commission?

Counsel for plaintiff objected to the question as immaterial. The court sustained the objection, to which ruling defendant then and there duly excepted.

Q. And "F. H. P. & Co." mean "F. H. Prince & Company"?

Counsel for plaintiff objected to the question on the ground that the same was immaterial. The court sustained the objection, to which ruling defendant then and there duly excepted.

The foregoing comprises all of the evidence produced upon the trial of said cause.

The cause was thereupon argued orally and upon briefs by counsel for the respective parties and submitted to the court for consideration and decision. Thereafter, on the twenty-ninth day of September, 1898, the court made and filed the cause in favor of the plaintiff and against the defendant.

Thereafter, in due time, defendant moved the court for a new trial of said cause upon the following grounds:

(1.) Insufficiency of the evidence to justify the said decision.

(2.) That said decision is against law.

472 (3.) Errors in law occurring at the trial and excepted to by the defendant.

And pending said motion defendant duly moved the court to make certain additional findings as hereinafter set forth, and duly excepted to certain findings of the court as hereinafter set forth.

The court thereupon made and filed certain additional findings of fact, as the same appear in the judgment-roll, but refused to make the following additional findings of fact:

Defendant requested the court to make the following additional findings of fact, viz: "Amend finding No. 12 by inserting after the words 'E. G. & E. Wallace,' in line twenty-seven, on page ten, the following: 'Before purchasing said bonds, said firm of E. G. & E. Wallace asked for the opinion of some attorney in Boston, known to the firm, upon the question of the validity of the bonds and, after consultation, it was decided to refer the question to Mr. M. F. Dickinson, Jr., an attorney of the city of Boston. Prince & Company thereupon employed and consulted said Dickinson in regard to the validity of the bonds in question, and submitted to him copies of said ordinances numbered 314, 315 and 320 of the city of Santa Cruz; after examining which, said Dickinson rendered a written opinion in favor of the validity of the bonds, which opinion was furnished to and received by said firm of E. G. & E. Wallace prior to their purchase of the bonds in question. But said Dickinson did not communicate his knowledge of said ordinances, or any of them, to said E. G. & E. Wallace.'"

The court refused to make said additional finding as
473 requested by defendant, to which ruling and action of the court defendant thereupon duly excepted.

Defendant thereupon requested the court to make the following additional finding of fact, viz: "Amend finding No. 5 by inserting after the words 'Coffin & Stanton,' in the first line of said finding, the words 'immediately after receiving said bonds, sold the same, and each and all thereof, but.'"

The court refused to make said additional finding of fact, to which ruling and action of the court defendant then and there duly excepted.

Defendant thereupon requested the court to make the following additional finding of fact, to be known as finding No. 16, viz:

"That the bonds and coupons mentioned and described in plaintiff's complaint, and each and all of them, were fraudulently taken by Walter Stanton from the custody of the city clerk of the city of Santa Cruz on or about the twenty-fourth day of April, 1894, and then and there, by him, the said Walter Stanton, appropriated to his own use."

The court refused to make said additional finding as requested by defendant, to which ruling and action of the court defendant then and there duly excepted.

Defendant thereupon requested the court to make the following additional finding of fact, to be known as finding No. 17, viz:

"That each and all of said bonds and coupons mentioned and set forth in plaintiff's complaint were, on or about the twenty-
474 fourth day of April, 1894, willfully, unlawfully and feloniously stolen, taken and carried away from the possession of the clerk of said city of Santa Cruz by Walter Stanton, a member of the said firm of Coffin & Stanton."

The court refused to make said additional finding as requested by defendant, to which ruling and action of the court defendant then and there duly excepted.

Defendant thereupon requested the court to make the following additional finding, to be known as finding No. 18, viz:

"That all purchasers and holders of the bonds and coupons mentioned and set forth in plaintiff's complaint had full notice and knowledge at the time of purchasing the same that said bonds and coupons, and each and all of them, constituted part of an indebtedness sought to be contracted by the city of Santa Cruz over and above and in excess of fifteen per cent. upon the assessed value of all taxable, real and personal property in said city of Santa Cruz, at the time of the issuance of such bonds."

The court refused to make the said additional finding as requested by the defendant; to which ruling and action of the court defendant then and there duly excepted.

Defendant thereupon requested the court to make the following additional finding of fact, to be known as finding No. 19:

"That the four hundred and fifty bonds of the denomination of $500 each, dated January 15, 1889, bearing interest at the rate of five per cent. per annum, issued by said city of Santa Cruz for the purchase and construction of the city water works, for
475 the refunding of which, to the extent of $225,000 the refunding bonds mentioned and described in plaintiff's complaint were in part issued, were, and each of them was, issued, sold and delivered by the city of Santa Cruz after the act of the legislature of the State of California *and* authorizing their execution, issuance, sale and delivery had been repealed; namely, after the nineteenth day of March, 1889."

The court refused to make the said additional finding, as requested by defendant; to which ruling and action of the court defendant then and there duly excepted.

The court thereupon, at the suggestion of plaintiff, and against the objection of defendant, made the following additional finding of fact, as an amendment to finding No. 12 of the original findings of fact filed in the cause, viz:

Prior to the purchase of the bonds by E. G. & E. Wallace, Messrs. F. H. Prince & Co. submitted to them a copy of the following opinion of Z. N. Goldsby, the city attorney of the defendant, practicing law in the city of Santa Cruz, California, namely:

"SANTA CRUZ, CAL., *April* 25, 1894.

I hereby certify that I have carefully examined all the steps taken and proceedings had relative to the issuance of $360,000 in five per cent. refunding bonds by the city of Santa Cruz, in the

State of California, and the bonds issued pursuant thereto, dated April 16, 1894, and find said proceedings regular, and said bonds legally issued and a valid and binding obligation of said city of Santa Cruz.

Z. N. GOLDSBY."

And, also, submitted a copy of the following opinion of L. B. Gleason, an attorney-at-law, practicing in the city of New York, namely:

476 "Messrs. Coffin & Stanton, 72 Broadway, New York city.

GENTLEMEN: I return herewith certified copies of the proceedings of the officials of the city of Santa Cruz, Cal., with reference to the issuance of refunding bonds of said city, bearing date April 16, 1894.

I have made a careful examination of these papers and of the constitution and statutes of the State of California, with reference to the issuance of refunding bonds by cities of said State. All the provisions of the constitution and the statutes of the State seem to have been most carefully and fully complied with, and from my examination I am of the opinion that these bonds are issued in pursuance of the laws relating thereto, and are legal and valid obligations of the said city of Santa Cruz.

Yours truly, LAFAYETTE B. GLEASON."

The copies of the opinion of Goldsby and of Gleason were furnished to F. H. Prince & Co. by Messrs. Coffin & Stanton. These opinions were not satisfactory to E. G. & E. Wallace, and they asked the opinion of some attorney practicing law in the city of Boston. F. H. Prince & Co. thereupon suggested that the opinion of M. F. Dickinson, Jr., an attorney practicing in that city, should be obtained; this suggestion was satisfactory to E. G. & E. Wallace, and it was then agreed between F. H. Prince & Co. and E. G. & E. Wallace that the opinion of said Dickinson upon the question of the validity of said bonds should be obtained by F. H. Prince & Co. F. H. Prince & Co. then, on their own account and for themselves, and not acting as agents of E. G. & E. Wallace, employed
477 said Dickinson to give his opinion in relation to the validity of such bonds, and as the result of such employment, and as the attorney of F. H. Prince & Co., Dickinson gave to F. H. Prince & Co. the following opinion, which was afterwards by F. H. Prince & Co. submitted to E. G. & E. Wallace, prior to their purchase of such bonds:

"BOSTON, *August* 29, 1894.

F. H. Prince & Co., 2 and 8 State street, Boston, Mass.

GENTLEMEN: I have examined the papers that you have submitted in regard to the $360,000, five per cent. refunding bonds of the city of Santa Cruz, Cal., dated April 16, 1894. In my opinion the bonds are legally issued in conformity to the laws of the State

of California and the ordinances of the city of Santa Cruz, and constitute a legal and valid obligation of said city.

Very respectfully yours, F. M. DICKINSON JR."

Said Dickinson had notice of all the matters recited in the ordinances of the defendant city, numbered 314, 315 and 320, but Dickinson did not communicate this knowledge of said ordinances, of any of the facts recited therein, to the said firm of E. G. & E. Wallace; and the said Dickinson, in the examination of said ordinances, and in giving said opinion, was not the agent or attorney of E. G. & E. Wallace, but acted solely as the attorney of F. H. Prince & Co.

To which ruling and action of the court making said additional finding, defendant then and there duly excepted.

478 Defendant excepted particularly to that portion of said last-mentioned additional finding which reads as follows: "F. H. Prince & Co. then, on their own account and for themselves, and not acting as agents of E. G. & E. Wallace, employed said Dickinson to give his opinion in relation to the validity of such bonds, and as the result of such employment, and as the attorney of F. H. Prince & Co., Dickinson gave to F. H. Prince & Co. the following opinion, which was afterwards by F. H. Prince & Co. submitted to E. G. & E. Wallace prior to their purchase of such bonds:" upon the ground that said portion of said finding is not supported by the evidence, nor by any evidence in the case and is contrary to all the evidence upon that subject in the case in this: that all of the evidence upon the subject of the employment of said Dickinson shows that he was employed by F. H. Prince & Co. as the agents of Messrs. E. G. & E. Wallace, not on account of nor for said F. H. Prince & Co., but on account of and for Messrs. E. G. & E. Wallace, the purchasers of said bonds.

Defendant also excepted particularly to that portion of said last-mentioned additional finding which reads as follows: "The said Dickinson, in the examination of said ordinances and in giving said opinion, was not the agent or attorney of E. G. & E. Wallace, but acted solely as the attorney of F. H. Prince & Co.;" upon the ground that said portion of said finding is not supported by the evidence, nor by any evidence in the case, and is contrary to all the evidence in the case in this: that all the evidence upon the subject of the employment of said Dickinson, and upon the subject of his advice and opinion concerning the validity of said bonds, shows that

479 he was the agent and attorney of E. G. & E. Wallace, and did not act solely or at all as the attorney of F. H. Prince & Co.

Defendant duly excepted to that portion of finding numbered eight of the original findings filed herein on September 29, 1898, which is in the words and figures following: "On the 26th day of March, 1894, ordinance No. 320 was duly enacted by the mayor and common council of the defendant," upon the ground that said portion of said finding is not supported by the evidence, nor by any evidence in the case, and is contrary to all the evidence in the case in this: That it appears from the evidence that said ordinance was not duly enacted, because it appears from the evidence that there

had been no election upon the question of refunding the bonded indebtedness of defendant prior to the twenty-sixth day of March, 1894; that the bond issue sought to be provided for in said ordinance was not authorized by any vote or action of the people of the city of Santa Cruz prior to the date of the alleged adoption of said ordinance, and that the evidence shows that said alleged ordinance was not enacted by the mayor and common council of the defendant, but was enacted by one William T. Jeter, pretending to act as mayor in place of Robert Effey, the duly elected and qualified mayor of defendant, and by other persons claiming and pretending to act as the common council of the defendant, but who were not at that time members of the common council of the defendant.

Defendant duly excepted to that portion of finding of fact numbered twelve of the original findings of fact filed herein, which is in the words and figures following: "All of the assignors of
480 plaintiff other than the one referred to in finding No. 3 and E. G. & E. Wallace, who purchased certain of the refunding bonds and coupons issued under the circumstances hereinafter set forth in this finding, were *bona fide* purchasers of the bonds and coupons assigned by them to plaintiff, and sued on in this action, and were without notice of any fact tending to impeach the truth of the recitals in said bonds," upon the ground that said finding of fact is not supported by the evidence, nor by any evidence in the case, and is contrary to all of the evidence upon that subject in the case.

Defendant duly excepted to all of that portion of finding of fact numbered twelve of the original findings of fact filed herein, which is in the words and figures following, to wit: "Therefore, knowledge of F. H. Prince & Co., concerning the illegality of said bonds, as shown by ordinances numbered 314, 315, and 320, was not constructive notice thereof to E. G. & E. Wallace," upon the ground that said finding is not supported by the evidence, nor by any evidence in the case, and is contrary to all of the evidence upon that subject in the case.

Defendant duly excepted to that portion of finding of fact numbered twelve of the original findings of fact filed herein, which is in the words and figures following to wit: "Nor did E. G. & E. Wallace have any actual knowledge or actual notice of said matters, nor of any fact tending to impeach the truth of the recitals contained in the bonds;" upon the ground that said finding is not supported by the evidence, nor by any evidence in the case, and is contrary to all of the evidence upon that subject in the case.

Defendant duly excepted to conclusion of law No. 1, namely,
481 "That Jeter was *de facto* mayor from April 16, to May 7, 1894, and the old council were *de facto* members of the common council between said dates;" upon the ground that said conclusion of law is erroneous, and is not supported by the evidence nor by the findings of fact herein.

Defendant duly excepted to conclusion of law No. 2, namely, "That E. G. & E. Wallace were *bona fide* purchasers of bonds assigned by them to plaintiff," upon the ground that said conclusion

of law is erroneous, and is not supported by the evidence, nor by the findings of fact herein.

Defendant duly excepted to conclusion of law No. 3, in findings of fact filed herein, which reads as follows: "That plaintiff is not entitled to recover upon the three coupons assigned by him by Northern Counties Investment Tr. Co., but is entitled to recover on all other bonds and coupons assigned him, with interest and costs of suit," upon the ground that that portion of said conclusion of law No. 3 which declares that the plaintiff is entitled to recover on all other bonds and coupons assigned to him, with interest and costs of suit is erroneous and contrary to the evidence, and contrary to the findings of fact herein, and is not supported by the evidence nor by the findings of fact herein.

Wherefore, plaintiff in error (defendant herein) prays that the judgment of the circuit court of the United States in and for the ninth circuit, northern district of California, be reversed, and that said circuit court be directed to grant a new trial herein.

482 The above is presented as the bill of exceptions on behalf of the defendant.

Dated December 5, 1898.

LINDSAY & CASSIN AND
JAMES G. MAGUIRE,
Attorneys for Defendant.

The foregoing is hereby allowed, settled and approved, as defendant's bill of exceptions in the above-entitled action. The exceptions therein noted were taken in all respects as provided by law, and the rules of this court. The time for presenting and filing the foregoing bill of exceptions was duly extended and continued by the written stipulation of plaintiff's attorneys to the present day.

Dated December 6, 1898.

JOHN J. DE HAVEN, *Judge.*

Service by copy of the foregoing bill of exceptions is hereby admitted this fifth day of December, 1898, within the time granted and allowed by our written stipulations.

Dated December 5, 1898.

CHICKERING, THOMAS & GREGORY,
Attorneys for Plaintiff.

Time for presentation of amendments to the foregoing bill of exceptions is hereby waived and said bill of exceptions may be presented to the judge of the circuit court who tried said cause, for allowance and settlement this sixth day of December, 1898.

CHICKERING, THOMAS & GREGORY,
Attorneys for Plaintiff.

(Endorsed:) Filed December 6, 1898. Southard Hoffman, clerk.

483 In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
THE CITY OF SANTA CRUZ (a Corporation), Defendant.

Petition for Writ of Error.

The City of Santa Cruz, defendant in the above-entitled cause, feeling aggrieved by the decision of the court and the judgment entered in said cause on the twenty-ninth day of September, 1898, in pursuance of said decision, whereby it was ordered, adjudged and decreed that plaintiff herein have and recover from the defendant the sum of $22,950, with interest thereon from April 15, 1895, with the costs incurred by said plaintiff in this action, now comes, by Lindsay & Cassin, James G. Maguire and John Garber, its attorneys, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the United States circuit court of appeals for the ninth circuit under and according to the laws of the United States in that behalf made and approved, and also that an order be made fixing the amount of security for costs which defendant shall give and furnish upon said writ of error.

484 Wherefore, petitioner prays that it be allowed to prosecute a writ of error to said the honorable the United States circuit court of appeals for the ninth circuit.

Dated December 28, 1898.

LINDSAY & CASSIN,
JAMES G. MAGUIRE,
JOHN GARBER,
Attorneys for Defendant.

United States Circuit Court of Appeals in and for the Ninth Circuit, Northern District of California.

THE CITY OF SANTA CRUZ (a Corporation), Plaintiff in Error,
vs.
ALBERT H. WAITE, Defendant in Error.

Assignments of Error.

Now comes The City of Santa Cruz, the plaintiff in error herein, by Lindsay & Cassin, James G. Maguire, and John Garber, Esqs., its attorneys, and particularly specifies the following as errors upon which it will rely and which it will urge in its writ of error in the above-entitled cause:

1.

That the circuit court of the United States, in and for the ninth circuit, northern district of California, erred in overruling de-
485 fendant's demurrer to the amended complaint of plaintiff in this action for the following reasons, to wit:

(*a.*) Because it appears upon the face of said amended complaint that plaintiff (defendant in error) has mistaken his remedy, for the reason that the bonds sued upon in this action, and the interest thereon, were to be paid only out of a special fund to be created for that purpose, in the manner and form prescribed by the statute and under and by virtue of which the refunding bonds are alleged to have been issued, and in accordance with the provision "for the collection of an annual tax sufficient to pay the interest on the same (the bonds) as it falls due, and also the provision to constitute a sinking fund for the payment of the principal thereof as it should fall due," alleged to have been made by the defendant in accordance with the terms of said bonds, and of the law under which they were issued, before the delivery of said bonds and coupons as alleged in the amended complaint, and there is no allegation, either that the special tax prescribed by law was or was not levied, and there is no allegation either that there is money in said special fund applicable to the payment of either the principal or the interest of said bonds, or any of them, nor that there is no money in such special fund. It appears upon the face of said amended complaint that plaintiff (defendant in error) is limited to the special fund provided by law and by the ordinance of the defendant for the payment of his bonds and coupons, and that he has no right to enforce the payment of either the bonds or coupons, or any of them, out of the general assets of the city of Santa Cruz.

486 (*b.*) Because the act of the legislature of the State of California entitled "An act to amend an act entitled 'An act authorizing the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefore, and to provide for the payment of the same (approved March 15, 1893),' approved March 1, 1893," by authority of which, and under the terms of which, it is alleged in said amended complaint that the bonds sued upon in this action were issued, is in conflict with the constitution of the State of California, in that said act is a local and special law relating to a subject concerning which the constitution of the State of California requires all laws to be general.

(*c.*) Because it appears upon the face of said amended complaint that the bond issued in question was illegally made, because in excess of the amount of bonded indebtedness which the city of Santa Cruz could contract under the laws of the State of California in force at the time when said bonds were issued.

(*d.*) Because the said refunding act under which said bonds are alleged to have been issued did not authorize the issuance of any bonds by the city of Santa Cruz, for the reason that, while the act in question gives power to the governing body of any city within the classes selected to submit to the qualified electors thereof, at an election to be held for that purpose, the question of refunding its outstanding indebtedness, evidenced by bonds and warrants thereof, and specifies the manner in which said election shall be

487 called and held and the form of notice to be given of such election, there is no provision in the act, or in any other act

or law of the State of California, as to what shall be the result of a vote favorable to refunding at such election, and that said refunding act does not say, either in terms or in substance, that if the vote at such election be favorable to refunding, the city or its governing body, or its executive head or any other officer or agent, shall have power to make or issue refunding bonds.

(*e.*) Because it appears upon the face of said amended complaint that neither the bonds nor the coupons were executed or signed by the city of Santa Cruz.

(*f.*) Because it appears upon the face of said amended complaint that the said refunding act under which said bonds are alleged to have been issued is unconstitutional, as violative of the provision of the Constitution of the United States which forbids any State to pass any law impairing the obligation of a contract.

(*g.*) Because said amended complaint does not show that the bonds sued upon were sold by the city of Santa Cruz for their face value in gold coin as required by said refunding act of 1893.

(*h.*) Because it appears upon the face of said amended complaint that the bonds sued upon, by the terms thereof, are payable in gold coin of the United States, violative of the provision of said refunding act of 1893 under which said bonds were issued, which requires that bonds issued under the terms and authority thereof shall be payable in gold coin or lawful money of the United States.

488 (*i.*) Because said complaint does not state facts sufficient to constitute a cause of action.

(*j.*) Because there is no allegation in said complaint that the plaintiff was a *bona fide* purchaser, nor that the plaintiff paid any consideration for the bonds or coupons purchased, nor are any facts alleged showing that at the time of any purchase by the plaintiff he had not notice of the invalidity of said bonds and coupons, nor that he had not notice of facts sufficient to put him upon inquiry as to such invalidity.

(*k.*) Because it appears on the face of said complaint that the plaintiff was not a *bona fide* purchaser without notice, in that it is alleged in the complaint that the notice of election therein mentioned was required by the statute of 1893 to, and did, specify the particulars of the indebtedness to be refunded, and that the plaintiff had notice of, and was bound to take notice of, all the terms and conditions of said statute, and, therefore, had notice to put him upon inquiry as to the invalidity of said bonds, as being an attempt to refund what was not such an indebtedness as was allowed by the statute to be refunded; and such inquiry, if reasonably pursued, would have fully informed plaintiff of the invalidity of said proceedings, the same appearing by matter of record provided for by the statute, to wit: the specification aforesaid required to be inserted in said notice of election.

(*l.*) Because it appears on the face of said amended complaint that plaintiff could not rely upon the recitals in said bonds as concluding the questions of the invalidity thereof or as estopping

489 the city from alleging to the contrary in said recitals, and that the matters and facts constituting the invalidity of said

bonds were not by any law committed to the decision of the officials of said city, and the question as to whether the indebtedness attempted to be refunded was such an indebtedness as could be so refunded under the said statute of 1893 was not one committed to the decision of the officials of the city of Santa Cruz or which could be concluded by any recitals by them made, but was to be determined by an inspection of the record evidence thereof provided for by the statute, and because the said city officials had no power finally or conclusively to determine the question whether the indebtedness *proposes* to be refunded *was such* an indebtedness as could be refunded under the said statute.

2.

Error of said court in overruling defendant's objection to the question asked the witness Robert Effey, on the grounds that said question was irrelevant, immaterial and incompetent. Said question and answer thereto are as follows:

"Q. Mr. Effey, did you assume the duties of the office of mayor on April 16, 1894? A. No, sir."

It appeared from the testimony of said witness (p. —) that at a charter election held in the city of Santa Cruz on the ninth day of April, 1894, he was elected mayor of said city of Santa Cruz, and that he qualified as such mayor by taking the oath of office on the sixteenth day of April, 1894, between the hours of 11 o'clock a. m. and 2 o'clock p. m., thereby and at that time becoming the *de jure* and *de facto* mayor of the city of Santa Cruz.

490 The said question asked the witness Effey was for the purpose of proving that some one else, and not Effey, was mayor of the city of Santa Cruz on the sixteenth of April, 1894, after the qualification of Effey; and said question was immaterial, irrelevant and incompetent, and the admission of the answer thereto prejudicial to the defendant.

3.

Error of said court in overruling the defendant's objection to the question asked the witness O. J. Lincoln, upon the grounds that the same was irrelevant, immaterial and incompetent. Said question and the answer thereto are as follows:

"Q. Mr. Lincoln, who performed the duties of the office of mayor of the city of Santa Cruz between April 16, 1894, and May 7, 1894? A. Mr. Jeter."

It has been established by the testimony of Robert Effey and by documentary evidence (p. —), that the said Robert Effey, on the sixteenth day of April, 1894, was the duly elected and qualified mayor of the city of Santa Cruz for the term of two years following April 16, 1894. The said question asked the witness Lincoln was for the purpose of proving that some one else, and not Mr. Effey, was mayor of the city of Santa Cruz between April 16, 1894, and May 7, 1894; and said question was immaterial, irrelevant and incompetent, and the admission of the answer thereto prejudicial to the defendant.

4.

Error of said court in admitting in evidence a resolution
491 incorporated in a purported record of a meeting of the city council of the city of Santa Cruz, held on the twenty-third day of April, 1894, ordering and directing that the bonds here in question be delivered to Messrs. Coffin & Stanton, the minutes of said meeting showing that William T. Jeter acted as mayor, and members of the old city council, whose successors were elected on the ninth day of April, 1894, and qualified between said ninth day of April and the sixteenth day of April, 1894 (p. —) acted as members of the city council (p. —).

Defendant objected to said resolution as irrelevant, immaterial and incompetent, and now specifies, in support of said objection, that the resolution appeared from the face of the minutes to have been adopted by persons who were not legally entitled to the offices the functions of which they exercised at the time. The court overruled the objection; to which ruling defendant then and there duly excepted. The resolution was thereupon admitted in evidence (p. —) to the prejudice of defendant.

5.

Error of said court in overruling the objection of defendant to a question asked the witness, William T. Jeter, on the grounds that the same was immaterial, irrelevant and incompetent. Said question and the answer thereto are as follows:

"Q. Mr. Jeter, who performed the duties of the office of mayor of Santa Cruz from April 16 to May 7, 1894? A. I acted as mayor until the evening of the seventh of May as well as I recollect" (p. —).

It had been established by the testimony of Robert Effey
492 and by documentary evidence as hereinabove in these assignments of error stated, that on the sixteenth day of April, 1894, Robert Effey was the duly elected and qualified mayor of the city of Santa Cruz for the then ensuing term of two years; and the said question asked the witness Jeter was for the purpose of showing that he (Jeter) was mayor of the city of Santa Cruz from April sixteenth to May seventh, 1894; and said question was immaterial, irrelevant, and incompetent, and the admission of the answer thereto prejudicial to the defendant.

6.

Error of said court in overruling defendant's objection to the question asked the witness, William T. Jeter, on the grounds that the same was irrelevant, immaterial and incompetent. The said question and the answer thereto are as follows:

"Q. I want to ask you, Mr. Jeter, if Mr. Robert Effey, the mayor-elect, attempted in any way to your knowledge to perform the duties of mayor of Santa Cruz prior to May 7, 1894? A. Not to my knowledge."

It had been established, as hereinbefore stated, that Robert Effey was the mayor of the city of Santa Cruz from April 16, 1894, to May

7, 1894; and the said question asked the witness Jeter was for the purpose of showing that the (Jeter) and not Effey, was mayor of the city of Santa Cruz between said dates; and said question was immaterial, irrelevant and incompetent, and the admission of the answer thereto prejudicial to the defendant.

7.

Error of said court in overruling defendant's objection to
493 the question asked the witness, William J. Jeter, on the grounds that the same was irrelevant, immaterial and incompetent. The said question and the answer thereto are as follows:

"Q. Between the sixteenth of April and the seventh of May, did any person question your right to act as mayor of the city of Santa Cruz? A. Not that I have any knowledge of."

It had been established, as hereinbefore stated, that Robert Effey was mayor of the city of Santa Cruz from the sixteenth day of April to the seventh day of May, 1894; and the said question was asked for the purpose of showing that William T. Jeter, and not Robert Effey, was mayor of said city between said dates; and said question was immaterial, irrelevant and incompetent, and the admission of the answer thereto prejudicial to the defendant.

8.

Error of said court in overruling defendant's objection to the question asked the witness Charles E. Williams on recross-examination, on the ground that said question was immaterial and not cross-examination. The said question and the answer thereto are as follows:

"Q. Do you know what there is standing to the credit of that fund today? A. There is standing to the credit of said mortgage-bond fund $14,100 and some odd dollars" (p. —).

It had been established by evidence that the bonds sued upon herein were issued in part for the purpose of refunding the mortgage bonds of a private corporation, to wit: the City Water
494 Company of Santa Cruz, and therefore in violation of the provisions of the refunding act of 1893, under which the said bonds sued upon herein are alleged to have been issued (pp. —).

The witness Charles E. Williams testified in his direct examination on behalf of the defendant that he was city treasurer and tax collector of the city of Santa Cruz, and had held that office since 1892 continuously; that the city of Santa Cruz had never received any payment for the refunding bonds alleged to have been executed by the defendant, and that no money had ever at any time come into his possession, as treasurer or otherwise, in the payment of any of those bonds; and had furthermore testified, on redirect examination, as to the amount of the bonded indebtedness of the city of Santa Cruz evidenced by bonds and warrants of said city on the thirteenth of March, 1894, and that said mortgage bonds of said private corporation were not part of the bonded indebtedness of the city of Santa Cruz (pp. —).

On recross-examination the witness testified that his books contain entries with regard to the payment of interest on said mortgage bonds of said private corporation; that on one occasion, in 1893, interest on said mortgage bonds was forwarded to the Holland Trust Company for payment, and an account of such disbursement appeared in witness's books as treasurer; that the city council created what was called a "mortgage-bond fund" in 1892 or 1893, and that certain receipts derived from the water works were carried to the credit of this fund; and that, against this fund, was charged the payment of the fund transmitted to the Holland Trust Company in 1893 in payment of interest on said mortgage bonds; that
495 witness, as treasurer, was still crediting to said mortgage-bond fund a certain proportion of the receipts from the water works.

The witness further stated on recross-examination that he had not that account with him, and that no interest on said mortgage bonds had been paid since the first payment in 1893.

The said question objected to was then asked; and said question was immaterial and not cross-examination, and the admission of the answer thereto prejudicial to the defendant.

9.

Error of said court in overruling the defendant's objection to the question asked the witness O. J. Lincoln, as follows:

"Q. Mr. Lincoln, will you kindly examine the minutes of the proceedings of the common council under dates of April 24, April 25, April 30, May 3, May 5, and the first of the two meetings of May 7, 1894, in which you have stated that on roll-call all were present. Can you now state from your memory, and refreshing the same from those entries, whether William T. Jeter, the mayor of the municipality, was present at those meetings?" (p. —.)

The defendant objected to this question as immaterial, irrelevant and incompetent, and not tending to show that William T. Jeter, was a *de facto* officer of the municipality, the city of Santa Cruz, on the afternoon of the sixteenth of April, 1894. The court overruled the objection; to which ruling of the court the defendant then and there duly excepted; and the witness answered that William T. Jeter was present at such meetings.

496 It had been established by the evidence, as above in these specifications of error stated, that Robert Effey was the duly elected and qualified mayor of the city of Santa Cruz from and after the sixteenth of April, 1894; and it had been further established by the evidence of William T. Jeter that a large portion of the said refunding bonds alleged herein to have been executed by the defendant were signed by him (Jeter) on the afternoon of April 16, 1894, after the hour of 3 o'clock and after the qualification of Robert Effey as mayor of the city of Santa Cruz, and after the expiration of the term of office of said William T. Jeter as mayor of the city of Santa Cruz; that such signing of said bonds was done in the private office of the witness Jeter, and privately, and not in the presence of any person or persons whatever (pp. —).

The said question asked the witness Lincoln and objected to did not tend to show that William T. Jeter was *de facto* mayor of the city of Santa Cruz on the afternoon of the sixteenth of April, 1894, when said bonds were signed by him; and said question was immaterial, irrelevant, and incompetent, and the admission of the answer thereto prejudicial to the defendant.

10.

Error of said court in overruling defendant's objection to the question asked the witness Walter Stanton, on the grounds that the same was irrelevant, immaterial, and had nothing to do with the case. The said question and the answer thereto are as follows:

"Q. Do you recollect any arrangement by which you were
497 to pay Prince, as a commission for placing the Ironwood bonds, half of the profits of the interest money on those bonds? A. There must be some paper in existence showing the exact relation of Coffin & Stanton and F. H. Prince & Co. in this matter. This transaction was carried on some four years ago and at a very anxious and worried time for the firm of which I was a member. And as to my recollection of these various bonds which you refer to, it is very difficult for me to form an absolute recollection of any one bond, excepting just the best I can by groping at it. On my direct examination I stated the best that I could remember. Now, when you call for these different bonds, it is absolutely impossible for me to remember" (pp. —).

11.

Error of said court in overruling defendant's objection to the question asked the witness Walter Stanton, on the grounds that the same was irrelevant and incompetent. The said question and the answer thereto are as follows:

"Q. I ask you whether you recall receiving a letter from F. H. Prince & Co. as follows: 'September 22, 1894. Coffin & Stanton, 72 Broadway, New York. You agreed with us last night that we should divide the interest on Ironwood bonds, and you must stand by it. F. H. Prince & Company.' A. I have no recollection. I was away from the city at the time that letter was sent" (pp. —).

12.

Error of said court in overruling defendant's objection to the question asked the witness Walter Stanton, on the ground
498 that the same was incompetent. The said question and the answer thereto are as follows:

"Q. Have you any doubt, from the examination of letter signed by your partner, 'Plaintiff's Exhibit 1 of this date,' that the transaction was closed at that date, September 22 or 23; should you not say that the contract was closed on that day? A. Yes" (pp. —).

13.

Error of said court in admitting in evidence the letter of September 22, 1894, from F. H. Prince & Co. to Coffin & Stanton, against

the defendant's objection, upon the grounds that said letter was inadmissible, irrelevant, immaterial and incompetent. The following is a copy of said letter:

"SEPTEMBER 22, 1894.

Coffin & Stanton, 72 Broadway, New York:

You agreed with us last night that we should divide the interest on Ironwood bonds, and you must stand by it.

F. H. PRINCE & COMPANY."

(pp. —.)

14.

Error of said court in denying defendant's motion to strike from the answer of the witness Frederick H. Prince, to a question asked him, the words in brackets in the following answer. Said question and the answer thereto are as follows:

"Q. Now what is it you wish to have understood as to your answer: that you did not inform the Messrs. Wallace that you received an opinion from Story & Thorndyke, or merely that you did not inform them that they had given you an opinion that the
499 bonds were illegal? A. I want to have it understood that I do not remember to have informed Messrs. E. G. & E. Wallace that I had an opinion from Messrs. Story & Thorndyke, and also that I distinctly remember that I did not inform them that Story & Thorndyke had given me an opinion that the bonds were illegal, [because they did not do so."] (pp. —.)

Said motion was made upon the ground that the said words "because they did not do so" were not responsive to the question.

15.

Error of said court in sustaining plaintiff's objection to the question asked the witness William H. Fleming, on the ground that the same was immaterial, the said question being as follows:

"Q. Does the entry correspond with the testimony given by Mr. Prince?" (p. —.)

It had been established that 150 of the alleged refunding bonds, purported to have been executed by the defendant, The City of Santa Cruz, and the subject of this action, had been assigned to the plaintiff herein without consideration and for collection only by Messrs. E. G. & E. Wallace (p. —). It had been further established that said 150 bonds were sold to Messrs. E. G. & E. Wallace by Messrs. Coffin & Stanton, through the medium of F. H. Prince & Co., and that, at the time of the sale of said bonds, F. H. Prince & Co. had full knowledge of all proceedings had in the matter of the issuance of said refunding bonds by the city of Santa Cruz, including knowledge of all ordinances passed by the mayor and
500 common council of the city of Santa Cruz with reference to the issuance of said bonds (pp. —).

The defendant contended, and still contends, that in the sale of said 150 refunding bonds to Messrs. E. G. & E. Wallace by Coffin & Stanton, F. H. Prince & Co. acted as and were the agents of E. G. & E. Wallace, and that, therefore, through the knowledge of their

agent, Messrs. E. G. & E. Wallace, had notice and knowledge of the illegality of said refunding bond issue.

Frederick H. Prince had testified, to the surprise of defendant, that, in such transaction, F. H. Prince & Co. were acting as the agents of Coffin & Stanton (p. —).

The witness Fleming testified that he was a clerk for F. H. Prince & Co., and had been with them in that capacity twelve years; that he remembered the transaction between F. H. Prince & Co. and Coffin & Stanton, and Messrs. E. G. & E. Wallace in the year 1894 concerning the sale of the Santa Cruz refunding bonds to Messrs. E. G. & E. Wallace and that he had found an entry on the books of F. H. Prince & Co. relating to said transaction (p. —).

That said question objected to by plaintiff was then asked, and the sustaining of said objection on the ground that the same was immaterial was error and prejudicial to the defendant.

16.

Error of said court in sustaining plaintiff's objection to the question asked the witness William H. Fleming, on the ground that the same was immaterial; the said question being as follows:

501 "Q. Will you please turn to the page of that book containing the entry and read the entries."

The entry referred to on page — of the record is as follows:

"Page 952, Stock Ledger No. 4.

E. G. & E. Wallace.

1894.			
Sept. 22.	8 per cent. Page Belting Co. rec'd.		
25.	150,000 Santa Cruz 5's, 100		150,000
	Int. at 5 162 days.		3,375
	Comm. F. H. P. & Co. as ag'ts		2,500
			155,875
1894.			
Sept. 25.	435 Page Belting Co., 85		36,975
	Demand loan		100,000
	C'k		18,900
			155,875"

and tended to prove that in said transaction of the sale of said refunding bonds to Messrs. E. G. & E. Wallace by Coffin & Stanton, F. H. Prince & Company were acting solely as the agents of E. G. & E. Wallace, and not as the agents of Coffin & Stanton, and the sustaining of plaintiff's objection thereto was error and prejudicial to the defendant.

17.

Error of said court in sustaining plaintiff's objection to the question asked the witness William E. Fleming, on the ground that the same was immaterial, the said question being as follows:

502 "Q. Mr. Fleming, what does the word 'rec'd' on the first line mean? 'Received?'" (pp. —.)

18.

Error of said court in sustaining plaintiff's objection to the question asked the witness Fleming, on the ground that the same was immaterial, the said question being as follows:

"Q. What does the figure '5' and the letter 's' after 'Santa Cruz' mean?" (pp. —.)

19.

Error of said court in sustaining plaintiff's objection to the question asked the witness Fleming, on the ground that the same was immaterial, the said question being as follows:

"Q. What does '5's' mean?" (pp. —.)

20.

Error of said court in sustaining plaintiff's objection to the question asked the witness Fleming, on the ground that the same was immaterial, the said question being as follows:

"Q. The words 'int. at 5 162 days,' on the third line—what do they mean?" (pp. —.)

21.

Error of said court in sustaining plaintiff's objection to the question asked the witness Fleming, on the ground that the same was immaterial, the said question being as follows:

"Q. The words 'comm. F. H. P. & Co. as ag'ts'—what
503 does the word 'comm.' mean? 'Commission?'" (p. —.)

22.

Error of said court in sustaining plaintiff's objection to the question asked the witness Fleming, on the ground that the same was immaterial; the said question being as follows:

"Q. And 'F. H. P. & Co.' means 'F. H. Prince & Company?'" (pp. —.)

23.

Error of said court in refusing to make the following additional finding of fact requested by defendant: "Amend finding No. 12 by inserting after the words 'E. G. & E. Wallace,' in line 27 on page 10, the following: 'Before purchasing said bonds, said firm of E. G. & E. Wallace asked for the opinion of some attorney in Boston known to the firm, upon the question of the validity of the bonds, and, after consultation, it was decided to refer the question to Mr. M. F. Dickinson, Jr., an attorney of the city of Boston. Prince & Co. thereupon employed and consulted said Dickinson in regard to the validity of the bonds in question, and submitted to him copies of said ordinances numbered 314, 315, and 320 of the city of Santa Cruz; after examining which said Dickinson rendered a written opinion in favor of the validity of the bonds, which opinion was

furnished to and received by said firm of E. G. & E. Wallace prior to their purchase of the bonds in question. But said Dickinson did not communicate his knowledge of said ordinances, or any of them, to said E. G. & E. Wallace." As the line and page of the
504 original finding hereinabove specified do not correspond in the record with the line and page of the original findings of fact on file, plaintiff in error states more specifically that the point in said finding No. 12 at which the amendment requested as above stated was to be inserted was after the following words in said finding: "That said F. H. Prince & Co. did not communicate their said knowledge to E. G. & E. Wallace."

The court erred in refusing to make said additional finding for the reasons that the same was in strict accordance with and fully supported by all the evidence and testimony on that subject, and there was no evidence or testimony to the contrary, and the said additional finding was required by the uncontradicted and undisputed evidence, to wit: the evidence of Summer Wallace and the evidence of Frederick H. Prince, as follows:

Summer Wallace testified as follows (pp. — of the record): "I think F. H. Prince & Co. made no statement to me in regard to the financial condition of the city or in regard to the validity of the bonds. They submitted the opinion of Mr. Goldsby, of Santa Cruz, Cal., and Mr. Gleason of New York. This was not satisfactory to us and we asked for the opinion of some attorney in Boston and decided to refer it to Mr. M. F. Dickinson, Jr., attorney for the American Loan & Trust Co., and his opinion was obtained, which I have here. Those opinions being favorable I purchased the bonds. I have the opinions of the attorneys upon which we relied in making the purchase. * * * I never saw Mr. Dickinson. Mr. Prince brought his opinion to us. All those opinions were procured
505 by Prince & Co. or by Coffin & Stanton. The Goldsby and Gleason opinions were submitted to us without consultation with us, but the Dickinson opinion was obtained after, by agreement, *after* I had said to Prince & Company that I wanted an opinion from Dickinson."

Frederick H. Prince testified (pp. — of the record): "I suggested to Messrs. Wallace that they buy the Santa Cruz bonds, and they authorized me to buy them. I stated to them that Coffin & Stanton in New York, I thought, were hard up for money, it being then in the middle of one of our panics, and I thought by advancing this amount of money he could get them to buy this manufacturing stock in exchange. Messrs. E. G. & E. Wallace had spoken to me previously about selling that Page Belting stock, before I broached this purchase of the Santa Cruz bonds, and they had told me I could sell the belting stock if I could. * * * I don't know whether the Messrs. Wallace made any inquiry as to the legality or validity of the Santa Cruz bonds. We employed attorneys to make investigation and to give an opinion as to the legality of the bonds. We employed Mr. M. F. Dickinson. Story & Thorndyke were our private counsel, and they were called upon by us to investigate into the legality of these bonds and to give an opinion.

During the long negotiations between July and September the Messrs. Wallace asked whether we had called upon any attorneys for their opinion as to the legality of these bonds. It is always customary in a sale of bonds to give a lawyer's opinion that the bonds have been properly examined, and in this case, I think there were three opinions. Messrs. Wallace asked us what opinion we had in regard to the bonds being properly issued, and we
506 gave them Mr. Dickinson's opinion, and also the opinion of some lawyer in New York, whose name I do not recollect, and also the lawyer out in California. Coffin & Stanton sent us all the papers relating to the issue of these Santa Cruz refunding bonds, and we submitted them to Mr. Dickinson, whom we consulted before we consulted Story & Thorndyke. * * * In this case, as I remember it, there was a very full set of papers, votes and so forth. I could not swear positively, but it is my impression that all the ordinances of the city of Santa Cruz, the advertisements, and the contract with Coffin & Stanton, were submitted. They were very careful to send all papers. That is my best memory. * * * It is customary in selling bonds to give a Boston lawyer's opinion in reference to the same. The opinion of the California lawyer and the New York lawyer were sent to me with the papers by Coffin & Stanton. I think Dickinson gave us his opinion, and then we called on Story & Thorndyke, our private lawyers, for their opinion. After we originally got papers from Coffin & Stanton in connection with these Santa Cruz bonds, Dickinson asked for certain papers, which were sent for to Coffin & Stanton and they sent them to us. That was subsequent to the first papers sent us and before Dickinson gave his opinion. As I remember it he asked for some papers, that we sent for them, and they were given to him. Coffin & Stanton supplied us with all the necessary sworn statements of all kinds and descriptions * * *."

The said witness, Frederick H. Prince, further testified (pp. — of the record), that the firm of Frederick H. Prince & Co.
507 had sent the following letter to Messrs. E. G. & E. Wallace before the purchase by said Messrs. E. G. & E. Wallace of the bonds in question:

"BOSTON, *August* 31, 1894.

Messrs. E. G. & E. Wallace, Rochester, N. H.

GENTLEMEN: As instructed by you, we have negotiated with Messrs. Coffin & Stanton to sell to you the $360,000 City of Santa Cruz, Cal., 5 per cent. bonds, dated April 16, 1894, at par and interest, they agreeing to accept, in payment therefor, 350 shares of Page Belting Co. preferred stock at par; 520 shares of Page Belting Co. common stock at 85, and the balance in cash. The legality of this issue of bonds has been passed upon by Mr. M. F. Dickinson, Jr., of the law firm of Messrs. Hyde, Dickinson & Howe, the attorneys of the American Loan and Trust Co., and we enclose herewith his written opinion, which kindly return to us for our files. Please notify us when it will be agreeable to you to carry through the

transaction. Our charge to you for services in this matter will be $2,500, as already arranged with Mr. Summer Wallace.

Very truly yours, F. H. PRINCE & CO."

24.

Error of said court in refusing to make the following additional finding of fact requested by said defendant: "Amend finding No. 5 by inserting, after the words 'Coffin & Stanton' in the first line of said finding, the words 'immediately after receiving said bonds, sold the same, and each and all thereof, but.'"

The court erred in refusing to make said additional find-
508 ing of fact because the uncontradicted evidence shows that Coffin & Stanton, immediately after receiving the bonds in question from the city clerk of the city of Santa Cruz, sold and hypothecated the same, and each and all thereof, for the sole benefit of said firm of Coffin & Stanton (pp. —).

25.

Error of said court in refusing to make the following additional finding of fact requested by said defendant:

"That the bonds and coupons mentioned and described in plaintiff's complaint, and each and all of them, were fraudulently taken by Walter Stanton from the custody of the city clerk of the city of Santa Cruz on or about the twenty-fourth day of April, 1894, and then and there by him, the said Walter Stanton, appropriated to his own use."

The court erred in refusing to make said additional finding of fact because it appears from the evidence that Walter Stanton procured said bonds to be issued by the city of Santa Cruz, and delivered to him by the city clerk of the city of Santa Cruz, with the fraudulent intent and purpose of appropriating said bonds, and each and all thereof, to his own use and to the use of the firm of Coffin & Stanton, and that, immediately after securing possession of said bonds, he did appropriate the same, and each and all thereof, to his own use and to the use of his said firm of Coffin & Stanton, and there is no evidence contradictory of or inconsistent with said evidence (pp. —).

26.

Error of said court in refusing to make the following addi-
509 tional finding of fact requested by said defendant: "That each and all of said bonds and coupons mentioned and set forth in plaintiff's complaint were, on or about the twenty-fourth day of April, 1894, wilfully, unlawfully and feloniously stolen, taken and carried away from the possession of the clerk of said city of Santa Cruz by Walter Stanton, a member of said firm of Coffin & Stanton."

The court erred in refusing to make said additional finding of fact because the evidence shows that Walter Stanton did, on or about the twenty-fourth day of April, 1894, obtain possession of the bonds and coupons mentioned and set forth in plaintiff's complaint

upon false and fraudulent pretenses and representations, with *interest* at the time of taking the same from the possession of the city clerk of the city of Santa Cruz to feloniously steal said bonds and coupons, and appropriate the same to his own use and to the use of the said firm of Coffin & Stanton. And there is no evidence contradictory of or inconsistent with said evidence (pp. —).

27.

Error of said court in refusing to make the following additional finding of fact requested by said defendant: "That all purchasers and holders of the bonds and coupons mentioned and set forth in plaintiff's complaint had full notice and knowledge at the time of purchasing the same that said bonds and coupons, and each of them and all of them, constituted part of an indebtedness to be contracted by the city of Santa Cruz over and above and in excess of 15 per cent. upon the assessed value of all taxable real and personal property in said city of Santa Cruz at the time of the issuance of such bonds."

510 The court erred in refusing to make said additional finding of fact for the following reasons, to wit: The undisputed evidence shows that all purchasers and holders of the bonds and coupons mentioned and set forth in plaintiff's complaint had knowledge from the recitals contained in each of said bonds that the same were issued pursuant to certain ordinances of the city of Santa Cruz and in pursuance of a vote of the qualified electors of the city of Santa Cruz called and held under an act of the legislature of the State of California entitled "An act to amend an act entitled 'An act authorizing the common council, board of trustees, or other governing body, of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same (approved March 15, 1883),' approved March 1, 1893;" and upon a notice of such election alleged in said recitals to have been given and published in the manner required by law. The constitution of the State of California prohibited said city of Santa Cruz from contracting indebtedness or issuing bonds therefor except upon a vote of two-thirds of the qualified electors of such city by the following provisions of section 18 of article XI of said constitution: "No county, city, town, township, board of education, or school district shall incur any indebtedness or liability, in any manner or for any purposes, exceeding in any year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness provision shall

511 be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void."

Said act of March 1, 1893, required the previously existing in-

debtedness of the city of Santa Cruz, evidenced by the bonds and warrants thereof and sought to be refunded, to be specifically set forth in the notice of election, together with a specific statement of the number, character and amount of the refunding bonds to be issued therefor, by the following provision:

"The notice of such election shall recite the indebtedness to be refunded, together with the denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued."

An act of the legislature of the State of California, namely: "An act to amend section 5 of an act approved March 19, 1889, entitled, 'An act authorizing the incurring of indebtedness by cities, towns and municipal corporations incorporated under the laws of this State for the construction of water works, sewers, and all necessary public improvements, or for any purpose whatever;' and to repeal the act approved March 9, 1895, entitled 'An act to authorize municipal corporations of the fifth class, containing more than 3,000 and less than 10,000 inhabitants, to obtain water works,' also to repeal an act approved March 15, 1887, entitled, 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State, March 19, 1889,' approved March 11, 1891" (Statutes of California, 1891, p. 84)—prohibited said city of Santa Cruz from incurring any indebtedness for public improvements in excess of 15 per cent. upon the assessed value of the taxable real and personal property within the corporate limits of said city.

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Ordinance Nos. 314, 315, 320 of defendant, The City of Santa Cruz, set forth in the findings of fact filed herein and in the bill of exceptions filed herein, each showed clearly upon its face that said refunding bond issue added to the pre-existing indebtedness of the city of Santa Cruz, evidenced by the bonds and warrants thereof, would constitute an indebtedness of at least $631,000; whereas, the assessment-rolls (being public records required by law to be kept by the officers of the city of Santa Cruz) showed that the assessed value of all taxable real and personal property within the city of Santa Cruz was $3,907,404, as appears in the amended complaint of plaintiff; and said proposed refunding bond issue was in excess of 15 per cent. upon the assessed value of all of said taxable real and personal property in said city of Santa Cruz.

The bonds upon their face, and by their recitals, gave notice of, and put all purchasers upon inquiry, as to the said fact that said indebtedness exceeded said limit of 15 per cent., and the said recitals in said bonds referred to the vote at the special election, which was a matter of public record and notoriety, and which showed the said excess over 15 per cent.; and, moreover, as to the bonds purchased by E. G. & E. Wallace, they had further actual notice of said excess by the statement in the attorney's opinions furnished to them, stating expressly the amount of the refunding issue; and, moreover, as to the bonds held by John Branch, the Wakefield Trust Company of Wakefield, Rhode Island, the First National Bank of Worcester, Massachusetts, the Albany City national bank, the

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South Norwalk Savings Bank of South Norwalk, the Bank of Skaneateles, of Skaneateles, New York, the Kenduskeag National Bank of Bangor, Maine, the National Bank of Waterville, of Waterville, New York, and the First National Bank of Webster, Massachusetts, they had further actual notice of said excess from the circular or prospectus furnished them and each of them by Coffin & Stanton before their taking the bonds in question, which circular or prospectus shows the amount of the refunding bond issue, to wit: $360,000, and that said bonds were issued to refund outstanding bonds of said city of Santa Cruz to the amount of $320,000, issued for the purpose of obtaining water supply, and which said circular or prospectus further shows that the assessed valuation of all the assessed real and personal property in the city of Santa Cruz, at the time of the issuance of said refunding bonds, was $3,907,400.

Error of said court in refusing to make the following additional find- of fact requested by said defendant: "That 450 bonds of the denomination of $500 each, dated January 15, 1889, bearing interest at the rate of 5 per cent. per annum, issued by said city of Santa Cruz, for purchase and construction of the city water works, for the refunding of which, to the extent of $225,000, the refunding bonds mentioned and described in plaintiff's complaint were in part issued, were, and each of them was, issued, sold and delivered
514 by the city of Santa Cruz after the act of the legislature of the State of California authorizing their execution, issuance, sale and delivery had been repealed; namely, after the nineteenth day of March, 1889."

The court erred in refusing to make said additional finding of fact because it appears from the evidence, without contradiction, that nearly all of said 450 bonds of the denomination of $500 each, dated January 15, 1889, were issued and sold and delivered by the city of Santa Cruz after the nineteenth day of March, 1889, and that the act authorizing the execution, issuance, sale and delivery of such bonds was on the nineteenth day of March repealed (pp —).

29.

Error of said court in making, at the suggestion of plaintiff and against the objection of defendant, the following additional finding of fact, as an amendment to finding No. 12 of the original findings of fact filed in the cause, viz:

"Prior to the purchase of the bonds by E. G. & E. Wallace, Messrs. F. H. Prince & Co. submitted to them a copy of the following opinion of Z. N. Goldsby, the city attorney of the defendant, practicing law in the city of Santa Cruz, California, namely:

"'SANTA CRUZ, CAL., *April* 25, 1894.

I hereby certify that I have carefully examined all the steps taken and proceedings had relative to the issuance of $360,000 in 5 per cent. refunding bonds by the city of Santa Cruz, in the State of California, and the bonds issued pursuant thereto, dated April
515 16, 1894, and find said proceedings regular, and said bonds legally issued, and a valid and binding obligation of said city of Santa Cruz. Z. N. GOLDSBY.'

"And also submitted a copy of the following opinion of L. B. Gleason, an attorney-at-law, practicing in the city of New York, namely:

"'Messrs. Coffin & Stanton, 72 Broadway, New York city.

GENTLEMEN: I return herewith certified copies of the proceedings of the officials of the city of Santa Cruz, Cal., with reference to the issuance of the refunding bonds of said city, bearing date April 16, 1894. I have made a careful examination of these papers and of the constitution and statutes of the State of California, with reference to the issuance of refunding bonds by cities of said State. All the provisions of the constitution and the statutes of the State seem to have been most carefully and fully complied with, and from my examination I am of the opinion that these bonds are issued in pursuance of the laws relating thereto, and are legal and valid obligations of the said city of Santa Cruz.

Yours truly, LAFAYETTE B. GLEASON.'

"The copies of the opinion of Goldsby and of Gleason were furnished to F. H. Prince & Co. by Messrs. Coffin & Stanton. These opinions were not satisfactory to E. G. & E. Wallace, and they asked for the opinion of some attorney practicing law in the city of Boston.

F. H. Prince & Co. thereupon suggested that the opinion of
516 M. F. Dickinson, Jr., an attorney practicing in that city, should be obtained; this suggestion was satisfactory to E. G. & E. Wallace, and it was then agreed between F. H. Prince & Co. and E. G. & E. Wallace that the opinion of said Dickinson upon the question of the validity of said bonds should be obtained by F. H. Prince & Co. F. H. Prince & Co. then, on their own account and for themselves, and not acting as agents of E. G. & E. Wallace, employed said Dickinson to give his opinion in relation to the validity of such bonds, and as the result of such employment, and at the attorney of F. H. Prince & Co., Dickinson gave to F. H. Prince & Co. the following opinion, which was afterwards by said F. H. Prince & Co. submitted to E. G. & E. Wallace, prior to their purchase of such bonds:

"'BOSTON, *August* 29, 1894.

F. H. Prince & Co., 2 and 8 State street, Boston, Mass.

GENTLEMEN: I have examined the papers that you have submitted in regard to the $360,000 5 per cent. refunding bonds of the city of Santa Cruz, Cal., dated April 16, 1894. In my opinion, the bonds are legally issued in conformity to the laws of the State of California and the ordinances of the city of Santa Cruz, and constitute a legal and valid obligation of said city.

Very respectfully yours, M. F. DICKINSON, JR.'

"Said Dickinson had notice of all the matters recited in the *circumstances* of the defendant city, numbered 314, 315 and 320,
517 but Dickinson did not communicate this knowledge of said ordinances, or of any of the facts recited therein, to the said firm of E. G. &. E. Wallace; and the said Dickinson, in the exam-

ination of such ordinances, and in giving said opinion, was not the agent or attorney of E. G. & E. Wallace, but acted solely as the attorney of F. H. Prince & Co."

The court erred in making said additional finding of fact because it appears from the undisputed evidence that E. G. & E. Wallace specifically asked F. H. Prince, of the firm of F. H. Prince & Co., to produce for said firm of E. G. & E. Wallace the opinion of said M. F. Dickinson, Jr., as to the validity of the bonds and as to the regularity of the issuance thereof, and that F. H. Prince & Co. thereupon, not for themselves, but for the firm of E. G. & E. Wallace, consulted and employed said Dickinson, and procured from him, for said E. G. & E. Wallace, the opinion set forth in said finding upon the question of the validity of said bonds and the regularity of their issuance.

Said evidence is not contradicted, and is not inconsistent with any other evidence in the case, and it appears from said evidence that said Dickinson, in the examination of said ordinances and in giving said opinion, was the agent and attorney of E. G. & E. Wallace, and did not act solely or at all as the attorney of F. H. Prince & Co.

(Reference is here made to the testimony of Mr. Summer Wallace, of the firm of E. G. & E. Wallace, as found on pp. — of the record, and as set forth in assignment of error No. 23 hereof.)

518 30.

Error of said court in making and finding, at the suggestion of said plaintiff and against the objection of said defendant, that portion of said last-mentioned additional finding which reads as follows:

"F. H. Prince & Co. then, on their own account and for themselves, and not acting as agents of E. G. & E. Wallace, employed said Dickinson to give his opinion in relation to the validity of such bonds, and, as the result of such employment, and as the attorney of F. H. Prince & Co., Dickinson gave to F. H. Prince & Co. the following opinion, which was afterwards by F. H. Prince & Co. submitted to E. G. & E. Wallace, prior to their purchase of said bonds."

The court erred in making and finding said portion of said additional finding of fact because said portion of said finding is not supported by the evidence, nor by any evidence in the case, and is contrary to all the evidence upon that subject in the case in this That all of the evidence upon the subject of the employment of said Dickinson shows that he was employed by F. H. Prince & Co. as the agent of Messrs. E. G. & E. Wallace, not on account of nor for said F. H. Prince & Co., but on account of and for Messrs. E. G. & E. Wallace, the purchasers of said bonds.

(Reference is here made to the said testimony of Summer Wallace and Frederick H. Prince, as hereinbefore set forth and referred to.)

31.

Error of said court in making and finding, at the suggestion of plaintiff and against the objection of defendant, that portion of said last-mentioned additional finding which reads as follows: "The said Dickinson, in the examination of said ordinance, and in giving said opinion, was not the agent or attorney of E. G. & E. Wallace, but acted solely as the attorney of F. H. Prince & Co."

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The court erred in making and finding said portion of said finding because said portion of said finding was not supported by the evidence, nor by any evidence in the case, and is contrary to all the evidence in the case in this: That all of the evidence upon the subject of the employment of said Dickinson, and upon the subject of his advice and opinion concerning the validity of said bonds, shows that he was the agent and attorney of E. G. & E. Wallace, and did not act solely or at all as the attorney of F. H. Prince & Co. (pp. —).

32.

Error of said court in making and finding that portion of finding No. 8 of the original findings of fact filed herein on September 29, 1898, which is in the words and figures following: "On the twenty-sixth day of March, 1894, ordinance No. 320 was duly enacted by the mayor and common council of the defendant."

The court erred in making and finding said portion of said finding because the same is not supported by the evidence, nor by any evidence in the case, and is contrary to all the evidence in the case in this: That it appears from the evidence that said ordinance was not fully enacted, in that there had been no election of defendant prior to the twenty-sixth day of March, 1894; for the reason that no notice of such election was published or given as required by law (pp. — of the record), and that the polls at such purported election were closed one hour and fifteen minutes before the time provided by law for closing of the polls at such an election, less than one-half of the qualified electors of the city of Santa Cruz having, up to the time of the closing of the polls, voted at such election (pp. — of the record). That the bond issue sought to be provided for in said ordinance was not authorized by any vote or action of the people of the city of Santa Cruz prior to the date of the alleged adoption of said ordinance, for the reasons hereinbefore in this assignment of error made and given; that ordinances numbers 314 and 315 of said city of Santa Cruz (pp. — of the record), submitting the proposition of refunding the alleged bonded indebtedness of the city of Santa Cruz, etc., showed on their face that a part of such alleged indebtedness to be refunded consisted of indebtedness evidenced by the mortgage of a private corporation, to wit: the City Water Company of Santa Cruz, and that the question of refunding such purported indebtedness of said private corporation was so connected with the indebtedness evidenced by the bonds of the city of Santa Cruz that the electors of the city of Santa Cruz could not at such election vote for the refunding of the bonded in-

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debtedness evidenced by the bonds of the city of Santa Cruz and against the bonded indebtedness evidenced by the bonds of said private corporation, or *vice versa;* and that said alleged ordinance was not enacted by the mayor and common council of the defendant,
but was enacted by one William T. Jeter, pretending to act
521 as mayor in place of Robert Effey, the duly elected and qualified mayor of defendant, and by other persons claiming and pretending to act as the common council of defendant, but who were not at that time members of the common council of defendant (pp. —).

33.

Error of said court in making and finding that portion of finding of fact No. 12 of the original findings of fact filed herein, which is in the words and figures following:

"All of the assignors of plaintiff, other than the one referred to in finding No. 3, and E. G. & E. Wallace who purchased certain of the refunding bonds and coupons issued under the circumstances hereinafter set forth in this finding, were *bona fide* purchasers of the bonds and coupons assigned by them to plaintiff and sued on — this action, and were without notice of any fact tending to impeach the truth of the recitals in said bonds."

The court erred in making and finding said portion of said finding of fact No. 12, in that it appears from the evidence that all of the purchasers mentioned in said portion of finding of fact No. 12 of the original findings of fact herein had notice of the ordinances Nos. 314 and 315, set forth in the additional findings of fact filed herein, by express reference to said ordinances in the recitals contained in each of said bonds, and had knowledge from such ordinances that the refunding bonds in question were issued in part for the purpose of refunding the mortgage bonds of a private corporation, namely, the City Water Company of the City of Santa Cruz;
and for the further reason that the remaining portion of the
522 alleged indebtedness to be refunded, a large part, and nearly the whole thereof, other than said private mortgage bonds, was no indebtedness of said city at all, and the 450 purported bonds by which the same are claimed to have been evidenced were void as having been nearly all issued in violation of and without authority of the law after the repeal of the statute under which an attempt was made to issue them, as set forth in assignment No. 28; and had notice from said ordinances that the election required by law and by the constitution of California to be held upon the question of incurring indebtedness and issuing refunding bonds was not conducted in accordance with the laws of the State of California, relating to such elections in the city of Santa Cruz in this: That at said election the polls were to be opened at sunrise and closed at 5 o'clock in the afternoon of the day of election—one hour and fifteen minutes before the time provided by law for closing the poles at such election, and that no notice of such election was given or published as required by law and the ordinance of said city of Santa Cruz; and that the question of refunding the mortgage bonds of said pri-

vate water company was so united with the proposition to refund the indebtedness of said city of Santa Cruz, evidenced by the bonds and warrants thereof, that the electors of said city of Santa Cruz could not vote for the refunding of the said indebtedness evidenced by the bonds and warrants thereof and against the refunding of said bonded indebtedness of said private corporation.

And it appears from the uncontradicted evidence that all of the purchasers had notice through said ordinances and through
523 the assessment-roll of said city of Santa Cruz that said refunding bond issue constituted an increase of the bonded indebtedness of said city of Santa Cruz to an amount in excess of 15 per cent. upon the assessed value of all taxable real and personal property in said city, and therefore constituted an overissue of bonds contrary to the limitations imposed upon the contraction of indebtedness and the issuance of bonds on the part of said city of Santa Cruz by the laws of California (pp. —).

It further appears from the uncontradicted evidence that John Branch, of the city of Boston, State of Massachusetts, and plaintiff's assignor for the collection of one refunding fund, the first coupon of which is sued upon in this action, had actual notice of facts tending to impeach the truth of the recitals in said bond before coming into possession of it.

John Branch testified as follows (pp. — of the record):

"I have been the owner of one of the municipal bonds purporting to be executed by the defendant on April 16, 1894, that is, bond No. 297, for $1,000, principal due 1927. About September 1, 1894, I had $1,000 that I wanted to invest in some strong municipal bond, and about that time a representative of Coffin, of Coffin & Stanton, a bond house, as I supposed, of good repute in New York, offered me a Santa Cruz bond having a long time to run, bearing 5 per cent. at par and accrued interest, at 101, less 1 per cent. commission, and I thought the bond was a good purchase because the bond was a refunding bond, and, also, from their financial statement. When I purchased it I made no inquiries in regard to the outstanding indebtedness of the city of Santa Cruz, to refund which this
524 series of bonds was issued, nor did I make any inquiry in regard to the title of Coffin & Stanton, or any members of that firm to the bond, and had no knowledge in regard to their title from any source other than inquiries made by me. I had no knowledge relative to the condition of the outstanding indebtedness of the city of Santa Cruz further than the published statement made by Coffin & Stanton of the indebtedness, together with the assessed valuation and population, etc.—the usual statement furnished by bond houses. I was furnished by Coffin & Stanton with copies of an opinion of attorneys. The Santa Cruz attorney's name was Goldsby. My recollection is that they were both California attorneys. The opinions were sent to me with the bond. I examined them practically at the same time I paid for the bond. I felt that the house of Coffin & Stanton was a reputable house, and I knew about Santa Cruz, and that an obligation against them was good,

so I bought the bond in good faith, believing that it was good and would be paid."

It further appears from the uncontradicted evidence that the Wakefield Trust Company of Wakefield, Rhode Island, the owner of one of the bonds assigned to plaintiff herein for collection, had actual notice of facts tending to impeach the truth of the recitals in said bonds before coming into possession of it.

John Babcock, a witness who was sworn on behalf of plaintiff, testified: That he is the treasurer of said Wakefield Trust Company, and that said trust company had in its possession a $1,000 bond, purporting to be executed by the officers of the city of Santa Cruz on the sixteenth day of April, 1894, which said bond was
525 taken by said trust company from Coffin & Stanton as collateral security for a loan made to Coffin & Stanton by said trust company; that when said trust company made the loan to Coffin & Stanton they were furnished by Coffin & Stanton with a letter and circular relative to said refunding-bond issue, which said letter and circular are in the words and figures following, to wit:

"Coffin & Stanton, bankers, New York, London.

72 BROADWAY, NEW YORK, *Aug.* 26, 1894.

Wakefield Trust Company, Wakefield, Mass.

GENTLEMEN: We have disposed of the $2,000 Illinois Central 4 per cent. bonds which are held by you as part collateral to our loan, for immediate delivery, and therefore send you tonight, under separate registered cover, $1,000 City of Santa Cruz, Cal., 5 per cent. bond and $1,000 New York City Suburban Water Company 6 per cent. bond. Please send the Illinois Central bonds by return registered mail, we having insured them during transit. We enclose postage for that purpose.

You are doubtless familiar with the merits of the New York City Suburban bonds, as you at present hold a number of them as collateral to our loan. We might add that we have made quite a number of sales of these bonds within the past two weeks, at prices ranging from 100 to 102½ and interest.

We would call your attention to the fact that the city of Santa Cruz is a prosperous city located in the most highly im-
526 proved portion of the State of California, in the vicinity of San Francisco, being peopled principally by inhabitants from New York and the New England States, who have gone thither in search of a more congenial climate. The city's affairs are well and intelligently conducted, we having been its fiscal agents for many years, and never known it to default or delay in the payment of interest upon any of its bonds. This issue was purchased by us after a thorough investigation by our Mr. Stanton upon the ground, and after he had become satisfied as to the stability of the city and its future prospects. We consequently have no hesitation in recommending the bonds as an excellent investment.

Trusting that this substitution will meet with your approval, we remain,

Yours truly, COFFIN & STANTON.

T."

"Coffin & Stanton, bankers, New York, London.

We offer, subject to sale or advance in price,

$300,000

City of Santa Cruz, California, five per cent. refunding gold, dated April 16, 1894, due as follows:

Nine thousand dollars April 15, 1895, and $9,000 annually thereafter. Average time to run, twenty and one-half years. No option of redemption before maturity. Denomination, $1,000. Coupons annually, April 15. Payable at city treasurer's office, Santa Cruz. Real valuation, $9,768,600. Assessed valuation, $3,907,400. Total debt (this issue), $360,000. Issued to refund bonds (for
527 water supply), $320,000. Net debt, $40,000. Including the suburbs a total population of 11,000 is tributary to the water system. The corporate limits of the city *has* not been enlarged for many years.

The water plant is a gravity system, costing about $370,000.

A legal investment for savings banks in the States of Rhode Island, Pennsylvania, Maryland and New Hampshire. Price 101 and interest. Nets nearly 5 per cent.

Under the law governing savings banks investments in the State of Massachusetts, the debt issued for water supply is deducted from the gross debt on the theory that such property is self-sustaining, and no burden upon the city. In estimating the debt indebtedness this rule has been followed."

And that said circular above set forth gives the assessed valuation of all the real and personal property in the city of Santa Cruz and the total debt of said city, and thus clearly shows that the adding of the refunding bond issue to the then outstanding indebtedness of the city of Santa Cruz would necessarily increase the indebtedness of said city, if said bonds were valid, to an amount in excess of 15 per cent. upon the said assessed valuation of the real and personal property of said city.

It further appears from the uncontradicted evidence that the First National Bank of Worcester, Massachusetts, the owner of twenty-two of said refunding bonds assigned to the plaintiff for collection, had actual notice of facts tending to impeach the truth of the recitals in said bonds before coming into possession of
528 them. The plaintiff testified in his own behalf, and stated that he was the president of said First National Bank of Worcester, Massachusetts, and that said bank had acquired possession of 22 bonds on account of a loan of $25,000, made at that time of Coffin & Stanton and represented by a promissory note of Coffin & Stanton, and that $12,000 Illinois Central 4's, $18,000 City of Santa Cruz 5's, were pledged as collateral security for the payment of that

note, that he represented the bank in this transaction with Coffin & Stanton; that the bank made no investigation of the financial condition of the defendant prior to the making of this loan; but that Mr. Terrell, an agent of Coffin & Stanton, delivered to said plaintiff a circular (which was the same circular hereinbefore set forth), and that such circular gave all information that the First National Bank of Worcester had in regard to the financial condition of the city of Santa Cruz. It had no statement or opinion in respect to the validity of the issue. Mr. Terrell made satisfactory representations in regard to that.

It further appears from the uncontradicted evidence that the First National Bank of Hagerstown, Maryland, the holder of some of said refunding bonds assigned to plaintiff herein, had actual notice of facts tending to impeach the truth of the recitals in said bonds before coming into possession of them.

Frank W. Mish, an attorney for and director of said First National Bank of Hagerstown, Maryland, testified: That the said bank came into possession of bonds purporting to be executed by officers of the defendant on April 16, 1894; that said bonds were taken as security for a loan made to Coffin & Stanton; and
529 that said circular hereinabove set forth was furnished to said bank by said Coffin & Stanton before the transfer of said bonds to said bank.

It further appears from the uncontradicted evidence that the Albany City national bank, the holder of twenty of said refunding bonds assigned to plaintiff herein, had actual notice of facts tending to impeach the truth of the recitals in said bonds before coming into possession of them.

Jonas H. Brooks, a witness on behalf of the plaintiff, testified: That he was cashier of the Albany City national bank at Albany, N. Y.; that the refunding bonds held by said bank were obtained from Coffin & Stanton in the nature of collateral security for a loan made them; and that the said circular (hereinabove set forth) was also furnished to said Albany City national bank by said Coffin & Stanton before the consummation of the transaction.

It further appears from the uncontradicted evidence that the South Norwalk Savings Bank of South Norwalk, the holder of eleven of said bonds assigned to plaintiff herein, had actual notice of facts tending to impeach the truth of the recitals contained in said bonds before coming into possession of them.

John W. Ferriss, a witness on behalf of plaintiff, testified: That he is vice-president of the South Norwalk Savings Bank of South Norwalk; that the said eleven bonds purporting to be executed by officers of the defendants on the sixteenth of April, 1894, came into possession of the bank as collateral security for a loan made to Coffin & Stanton of New York, by said bank; and that, before the transfer of said bonds from Coffin & Stanton to said
530 bank, Coffin & Stanton had submitted to said bank the circular hereinbefore set out.

It further appears from the uncontradicted evidence that the Bank of Skaneateles of Skaneateles New York, the holder of five of said

bonds assigned to plaintiff herein, had actual notice of facts tending to impeach the truth of the recitals in said bonds before coming into possession of them.

Benjamin F. Petheram testified: That he is cashier of said Bank of Skaneateles, and that said bank made a loan to Coffin & Stanton on their note, and took the said five bonds as collateral security therefor; and that, before coming into possession of said bonds, the said Bank of Skaneateles was furnished by Coffin & Stanton with the circular set forth hereinabove.

It further appears from the uncontradicted evidence that the Kenduskeag National Bank of Bangor, Maine, the holder of twelve of the said bonds assigned to plaintiff herein, had actual notice of facts tending to impeach the truth of the recitals in said bonds before coming into possession of them.

Frederick W. Hill testified: That he is a director of said Kenduskeag national bank, and that the said bonds were taken by said bank as collateral for a loan made to Coffin & Stanton by said bank, and that, before said bonds came into possession of said bank, Coffin & Stanton furnished said bank with the circular hereinabove described, upon which the said bank relied.

It further appears from the uncontradicted evidence that
531 the National Bank of Waterville, of Waterville, New York, the holder of one of said bonds assigned to plaintiff herein, had actual notice of facts tending to impeach the truth of the recitals in said bonds before coming into possession of it.

Samuel W. Gildwin testified: That he is the president of the National Bank of Waterville; that the said bank came into possession of one refunding bond of the city of Santa Cruz, given as collateral security to a note of Coffin & Stanton; that he (the said president) had made a thorough investigation of the bonds at that time, having sent to him from Coffin & Stanton copies of letters from G. Bowman, then mayor of Santa Cruz, and also being told by Mr. Stanton that they had bought the bonds, and that they were the actual owners thereof, and that they did not at that time handle any bond except such as they were the actual owners of; and, also, that the bank was furnished with the said circular set forth above before it took the bond; and, further, that the bank relied upon the prospectus and previous investigation of other Santa Cruz bonds and the statement of Coffin & Stanton and the letter of G. Bowman, mayor; that the knowledge that the bank had concerning the value of the bond at the time it was taken by the bank, and the financial condition of the city of Santa Cruz, was derived from the prospectus sent to the bank by Coffin & Stanton, and the knowledge obtained in the previous investigations.

It further appears from the uncontradicted evidence that the First National Bank of Webster, Massachusetts, the holder of four of said bonds assigned to plaintiff herein, had actual notice of acts
532 tending to impeach the truth of the recitals thereof before coming into possession af them.

Edward L. Spaulding testified: That he is the cashier of said First national bank, and that said refunding bonds came into the

possession of said bank as collateral, being security for a loan advanced Coffin & Stanton by the bank, and that the said printed statement or circular above set forth was furnished said bank before it took the bonds.

And for the further reason that the bonds upon their face and by their recitals gave notice of and put all purchasers upon inquiry as to the fact that the indebtedness created by the refunding-bond issue, added to the pre-existing indebtedness of the city of Santa Cruz, exceeded the limit of 15 per cent., beyond which limit said city of Santa Cruz could not lawfully incur indebtedness; and the recitals in said bonds refer to the vote at the special election, which was a matter of public record and notoriety, and which showed the said excess over 15 per cent.

34.

Error of said court in making and finding that portion of finding of fact No. twelve of the original findings of fact filed herein, which said portion of said findings of fact is set forth and referred to in the assignment of error last hereinabove set forth, for the following reasons, to wit:

That the refunding act of 1893, under which the bonds here in question were issued, is in conflict with the constitution of the State of California in that said act is a local and special law
533 relating to a subject concerning which the constitution of the State of California required all laws to be general; that said bond issue was illegally made because in excess of the bonded indebtedness which the city of Santa Cruz could contract under the laws of the State of California in force at the time when said bonds were issued; that said refunding act, under which said bonds are alleged to have been issued, did not authorize the issuance of any bonds by the city of Santa Cruz, for the reason that, while the act in question gives the power to the governing body of any city within the classes selected to submit to the qualified electors thereof, at an election to be held for that purpose, the question of refunding its outstanding indebtedness, evidenced by bonds and warrants thereof, and specifies the manner in which said election shall be called and held, and the form of notice to be given of such election, there is no provision in the act, or in any other act or law of the State of California, as to what shall be the result of a vote favorable to refunding at such election, and that said refunding act does not say, either in terms or in substance, that if the vote at such election be favorable to refunding, the city or its governing body, or its executive head, or any other officer or agent, shall have power to make or issue refunding bonds; that said refunding act is unconstitutional in that it is in violation of the provision of the Constitution of the United States which forbids any State to pass any law impairing the obligation of a contract; that said bonds sued upon herein are payable only in gold coin of the United States, in violation of the provisions of said refunding act of 1893, under which said bonds were issued, which requires that bonds issued
534 under the terms and authority thereof shall be payable in gold coin of lawful money of the United States; that it ap-

pears from the uncontradicted evidence herein that said refunding bonds sued upon herein were not sold by the city of Santa Cruz for their face value in gold coin, as required by said refunding act of 1893, and that said city of Santa Cruz received no consideration whatever for said bonds (pp. — of the record); that it appears from the uncontradicted evidence herein that no notice of an election submitting to the electors of said city of Santa Cruz the question of refunding the bonded indebtedness thereof was ever given or published as required by law or at all (pp. — of the record) and that it appears from the uncontradicted evidence herein that no election was ever held or had in said city of Santa Cruz at which two-thirds of the electors of said city, voting at such election, voted in favor of issuing bonds for the purpose of refunding the outstanding indebtedness of said city as required by the constitution of the State of California, in this, to wit: that at the purported election held in said city of Santa Cruz, at which electors of said city voted on the proposition of refunding the outstanding indebtedness thereof, less than one-half of the qualified electors of said city voted and the poles at such purported election were closed 1 hour and 15 minutes before the time provided by law for their closing, and that such purported election was held and conducted without notice thereof given and published in the manner required by law or at all (pp. — of the record); that it appears from the uncontradicted evidence that the refunding bonds sued upon herein were not executed or issued by the city of Santa Cruz, and were not signed by the
535 mayor of the said city of Santa Cruz, but that the greater portion thereof (it being impossible to identify which portion of which bonds) were signed by one William T. Jeter on the afternoon of the sixteenth day of April, 1894, after the election and qualification of the successor of said William T. Jeter as mayor of the city of Santa Cruz, and after the term of said William T. Jeter as mayor of said city had expired, and while said William T. Jeter was neither *de jure* nor *de facto* mayor of said municipality, the city of Santa Cruz (pp. — of the record), and that it appears from the uncontradicted evidence herein that said refunding bonds, so sued upon, were issued in part for the refunding of the mortgage bonds of a private corporation, namely, the City Water Company of Santa Cruz, in violation of the provisions of the refunding act of 1893, under which said refunding bonds are alleged to have been issued, and in violation of the constitution of the State of California.

35.

Error of said court in making and finding that portion of finding of fact No. 12 of the original findings of fact filed herein, which is in the words and figures following, to wit:

"Therefore, knowledge of F. H. Prince & Co. concerning the illegality of said bonds, as shown by ordinances numbered 314, 315 and 320, was not constructive notice thereof to E. G. & E. Wallace."

The court erred in making and finding said portion of said finding because said finding is not supported by the evidence nor
536 by any evidence in the case, and is contrary to all of the evidence upon that subject in the case, and because the evidence

shows that F. H. Prince & Co. were, in the matter of purchasing the bonds in question, and in the whole of said transaction, the agents for all purposes of said E. G. & E. Wallace (pp. —).

36.

Error of said court in making and finding that portion of finding of fact No. 12 of the original findings of fact filed herein, which is in the words and figures following, to wit: "Nor did E. G. & E. Wallace have any actual knowledge or actual notice of said matters, nor of any fact tending to impeach the truth of the recitals contained in the bonds."

37.

The court erred in making said portion of said finding of fact number twelve of the original findings of fact filed herein in that it appears from the evidence that said E. G. & E. Wallace had notice of the ordinances Nos. 314 and 315 set forth in the additional findings of fact filed herein, by express reference to said ordinances in the recitals contained in each of said bonds, and had knowledge from such ordinances that the refunding bonds in question were issued in part for the purpose of refunding the mortgage bonds of a private corporation, namely, the City Water Company of the City of Santa Cruz; and had knowledge that the remaining alleged indebtedness of the city of Santa Cruz to be refunded, a large part, and nearly the whole thereof, other than said private mortgage bonds, was no indebtedness of said city at all, and the 450 purported bonds by which the same are evidenced were void
537 as having been nearly all issued in violation of and without authority of law after the repeal of the statute under which an attempt was made to issue them, as set forth in assignment No. 28; and had notice from said ordinances that the election required by law and by the constitution of California to be held upon the question of incurring indebtedness and issuing refunding bonds was not conducted in accordance with the laws of the State of California relating to such election in the city of Santa Cruz in this: that at said election the polls were to be opened at sunrise and closed at 5 o'clock in the afternoon of the day of election—1 hour and 15 minutes before the time provided by law for closing the polls at such election; and that the question of refunding the mortgage bonds of said private water company was so united with the proposition to refund the indebtedness of said city of Santa Cruz, evidenced by the bonds and warrants thereof, that the electors of said city of Santa Cruz could not vote for the refunding of said indebtedness, evidenced by the bonds and warrants thereof, and against the refunding of said bonded indebtedness of said private corporation; and that the notice required by law to be published and given of such election was not published or given and that no notice of such election was published or given. And it appears from the uncontradicted evidence that said E. G. & E. Wallace had notice through said ordinances and through the assessment-roll of said city of Santa Cruz, and through the vote at said alleged election, that said

refunding bond issue constituted an increase of the bonded indebtedness of said city of Santa Cruz to an amount in excess of
538 15 per cent. upon the assessed value of all taxable real and personal property in said city, and therefore constituted an overissue of bonds, contrary to the limitations imposed upon the contraction of indebtedness and the issuance of bonds on the part of said city of Santa Cruz by the laws of the State of California.

38.

Error of said court in failing to make any finding of fact whatever on the issue joined by the defendant's answer that at the time of the alleged election on the question of refunding the outstanding bonded indebtedness of the city of Santa Cruz, as set forth in plaintiff's amended complaint, the total outstanding indebtedness of said city of Santa Cruz, which was evidenced by regularly issued and valid bonds and warrants thereof, was $39,000, and no more, no part of which was at that time either due or payable.

39.

Error of said court in failing to make any finding of fact on the issue joined by the defendant's answer that 450 of the bonds of the city of Santa Cruz of the denomination of $500.00 each, to refund which in part the said purported election was held, and the refunding bonds sued upon herein, were and each of them was, invalid and void, for the reason that all and each of said bonds were and was executed, sold and delivered after the act of the legislature of the State of California authorizing their execution, sale and delivery had been repealed, namely, after the nineteenth of March, 1889.

539 40.

Error of said court in failing to make any finding of fact on the issue joined by the defendant's answer that at the time of the execution, issuance, sale and delivery of said 225 bonds of the city of Santa Cruz, the sum thereof, namely, $225,000.00, was in excess of the amount of the indebtedness which the city of Santa Cruz might lawfully incur at the time of the execution, issuance, sale and delivery thereof for the purpose of which said bonds were issued, namely, for public improvements.

41.

Error of said court in failing to make any finding of fact on the issue joined by the defendant's answer that the 89 so called first-mortgage bonds of the private corporation of the City Water Company of Santa Cruz, of the denomination of $1,000.00 each, were, and each of them was, without right and without authority, issued by a private corporation known as the City Water Company of Santa Cruz upon a pretended mortgage, executed without right or authority by said private corporation, upon municipal property of the city of Santa Cruz, and that no part of the sum of said so-called first-mortgage bonds, nor of said mortgage, is or ever was a part of the municipal indebtedness of the city of Santa Cruz, and no part

thereof was ever evidenced by bonds and warrants of the city of Santa Cruz.

42.

Error of said court in failing to make any finding of fact on the issue joined by the defendant's answer that no election was on the thirteenth of March, 1894, or at any other time at all, held
540 or conducted in the city of Santa Cruz on the question of refunding the outstanding indebtedness or any indebtedness of said city.

43.

Error of said court in failing to make any finding of fact on the issue joined by the defendant's answer that the alleged refunding bonds or obligations of the city of Santa Cruz described in the plaintiff's amended complaint, together with the alleged coupons thereto attached, including the 9 alleged bonds and the 282 alleged coupons sued upon by plaintiff herein, were, and each of them was on the twenty-third day of April, A. D. 1894, by one Walter Stanton, willfully, unlawfully and feloniously taken, stolen and carried away from the possession of the city clerk of the said city of Santa Cruz.

44.

Error of said court in failing to make any finding of fact on the issue joined by the defendant's answer that the pretended issue of 360 of the so-called refunding bonds of the par value of $1,000.00 each on the sixteenth day of April, 1894, as set forth in the plaintiff's amended complaint, was an unlawful attempt without authority on the part of the mayor and common council of the city of Santa Cruz, to increase the bonded indebtedness of said city beyond the limit of 15 per cent. upon the assessed value of all the taxable real and personal property of said city as prescribed and fixed by the laws of the State of California.

45.

Error of said court in failing to make any finding of fact on the issue joined by the defendant's answer that said pretended
541 issue of 360 so-called refunding bonds of the par value of $1,000.00 each on the sixteenth day of April, 1894, as set forth in plaintiff's amended complaint, and every part and portion of said pretended bond issue, and each and every pretended bond thereof, is, and at all times has been, an attempted overissue of municipal bonds of the city of Santa Cruz.

46.

Error of said court in failing to make any finding of fact on the issue joined by the defendant's answer that said so-called refunding bond ssued upon herein and the coupons thereto, and each and all of them, were and was fraudulently taken by one Walter Stanton from the custody of the city clerk of the city of Santa Cruz on or about the twenty-fourth day of April, 1894, and then and there by him, the said Walter Stanton, appropriated to his own use.

47.

Error of said court in making and finding that portion of the first conclusion of law found by said court, which reads as follows: "That William T. Jeter was *de facto* mayor of the defendant city of Santa Cruz on the sixteenth day of April, 1894, and so continued until May 7, 1894," for the following reasons:

That said portion of said conclusion of law is not supported by any of the findings of fact herein.

That it appears from the ninth finding of fact herein that William T. Jeter was duly elected mayor of the city of Santa Cruz on May
11, 1892, and that his successor, Robert Effey, was duly elected
542 mayor of said city on the ninth day of April, 1894, and duly qualified as such mayor between the hours of 11 o'clock a. m., and 2 o'clock p. m., of April 16, 1894; that upon the qualification of Robert Effey as mayor of Santa Cruz he became the *de jure* mayor of said city of Santa Cruz; that thereafter, on said sixteenth day of April, 1894, the said William T. Jeter performed no function, and exercised no act, either publicly or notoriously, which gave notice to, or caused the people of the city of Santa Cruz to believe or to know that he was acting as, or intended to act as, or was exercising the functions of, or intended to exercise the functions of the office of mayor of the city of Santa Cruz.

That it appears from finding of fact No. 13, that some of the bonds sued upon herein were signed by William T. Jeter on April 16, 1894, after the qualification of his successor in the office of mayor; and it does not appear from the finding of fact, or any finding of fact herein, that at the time of signing said bonds said William T. Jeter was either publicly or openly or notoriously exercising the functions of — attempting to exercise the functions of mayor of said city of Santa Cruz; and that it does not follow from the facts found that said Jeter was at any time after the qualification of his successor the *de facto* mayor of said city, and no facts are found showing that he was such *de facto* mayor during such time.

48.

Error of said court in making and finding that portion of the first conclusion of law found by said court which reads as follows: "And
that he, and the persons who assumed to act as members of
543 the common council of defendant, on the sixteenth and twenty-third days of April, 1894, to wit: J. F. Hoffman, E. G. Greene and F. W. Lucas, were on those days the *de facto* mayor and the *de facto* members of the common council of the defendant city," for the following reasons to wit:

That said portion of said conclusion of law is not supported by any finding of fact herein.

That it appears from the findings of fact herein that on the ninth day of April, 1894, Robert Effey was duly elected as mayor of said defendant city to succeed William T. Jeter, and duly qualified as such between the hours of 11 o'clock a. m. and 2 o'clock p. m. of April 16, 1894, and Messrs, Henry G. Insel, John Howard Bailey, J. D.

Maher and Frank K. Roberts were on the said ninth day of April, 1894, duly elected members of the common council of said defendant city, and all of them duly qualified as such councilmen before the meeting of the common council of said defendant, held April 16, 1894; and that it does not follow from the facts found that said Jeter was at any time after the qualification of his successor on the sixteenth day of April, 1894, the *de facto* mayor of said city of Santa Cruz, or that said Hoffman, Greene and Lucas were at any time after the qualification of their successors as members of the common council of said city of Santa Cruz *de facto* members of said common council; and no facts are found showing that said Jeter was *de facto* mayor, or that said Hoffman, Greene and Lucas were *de facto* members of the common council during such time.

49.

Error of said court in making and finding that portion of conclusion of law No. 1 herein which reads as follows:

544 "And that the bonds and coupons sued on are upon their face valid obligations of the defendant," for the following reasons, to wit:

That said portion of said conclusion of law is not supported by the findings of fact herein, nor by any finding of fact herein.

That the act of the legislature of the State of California entitled "An act to amend an act entitled 'An act authorizing the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and to provide for the payment of the same (approved March 15, 1883),' (approved March 1, 1893)," by authority of which, and under the terms of which, it is alleged that the bonds sued on were issued, is in conflict with the constitution of the State of California in that said act is a local and special law relating to a subject concerning which the constitution of the State of California requires all laws to be general.

That said bonds and coupons were and are invalid because in excess of the amount of bonded indebtedness which the city of Santa Cruz could contract under the laws of the State of California in force at the time when said bonds were issued.

That the said act of the legislature of the said State of California above referred to and entitled, did not authorize the issuance of any bonds by the city of Santa Cruz, for the reason that, while the act in question gives power to the governing body of any city within the classes limited to submit to the qualified electors thereof, at an election to be held for that purpose, the question of refunding

545 its outstanding indebtedness evidenced by bonds and warrants thereof, and specifies the manner in which elections shall be called and held and the form of notice to be given of such election, there is no provision in the act, nor in any other act or law of the State of California, as to what shall be the result of a vote favorable to refunding at such an election, and that said refunding act does not say, either in terms or in substance, that if the vote at such election be favorable to refunding the city or its governing

body, or its executive head or any other officer or agent, shall have power to make or issue refunding bonds.

That said refunding act under which said bonds are alleged to have been issued is unconstitutional in that it is in violation of the provision of the Constitution of the United States, which forbids any State to pass any law impairing the obligations of a contract.

That said bonds show upon their face that they are invalid for the reason that they are payable in gold coin of the United States, in violation of the provision of said refunding act of 1893, under which said bonds were issued, which requires that said bonds issued *under the terms and authority thereof shall* be payable in gold coin or lawful money of the United States.

That it appears from the findings of fact herein that a large portion of said bonds, which portion it is impossible to identify, were not executed by the city of Santa Cruz, nor signed nor executed by any officer thereof, but were on the sixteenth day of April, 1894, after the qualification of his successor, signed by one William T. Jeter, pretending to act as mayor of said city of Santa Cruz,
546 after his term of office has expired, and while he was no longer either a *de jure* or a *de facto* officer of said municipality.

That it appears in the findings of fact herein that the plaintiff did not pay any money consideration for said bonds, but that they were assigned to him without consideration and for collection only.

That it appears from the findings of fact herein that said bonds constituted and overissue of indebtedness of the city of Santa Cruz, in violation of the laws of the State of California.

That it appears in the findings of fact herein that said bonds were issued in part for the purpose of refunding the mortgage bonds of a private corporation, to wit: the City Water Company of Santa Cruz, which said bonds were neither bonds nor warrants of said defendant The City of Santa Cruz, and were not evidences of the indebtedness of the City of Santa Cruz.

That it appears in the findings of fact herein that ordinance No. 315 of said defendant city, dated February 26, 1894, provided for and required notice to be given of an election to be held for the purpose of submitting to the qualified electors of said city of Santa Cruz the question of refunding the outstanding indebtedness thereof, which said ordinance directed the city clerk to cause to be published in the "Santa Cruz Surf" and "Santa Cruz Sentinel," for not less than ten days before the thirteenth day of March, 1894, a notice of such special election, and to post said notice at each place of election in said city, and which ordinance further provided that the notice so to be published and posted should be substantially in the words and figures set out in said ordinance, and should con-
547 tain, among other things, a recital of the indebtedness to be refunded, together with the denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued, and that the polls at such election would be

opened at sunrise in the morning of said day of election, and should close at 5 o'clock p. m. of the same day.

And it further appears from said findings of fact that such notice of election, so provided for and required to be given and published, was not in fact either given, made or published as required by said ordinance or by the laws of the State of California, or at all, and that no notice of such election was ever given or published.

That it further appears from said findings of fact that said ordinance No. 315 of said city of Santa Cruz, being the only ordinance providing for notice to be given of such election, required that the polls at such election should be opened at sunrise in the morning of said day, and should close at 5 o'clock p. m. of said day in violation of the laws of the State of California then in force which required that the polls at such election should not be closed until sundown of the day thereof, and that it appears from said findings of fact that the polls at such alleged election were opened and closed at the hours named in said ordinance, in conflict with and contrary to the provisions of the laws of the State of California with reference to the opening and closing of polls at such an election.

That it appears from said findings of fact that ordinance No. 314 of said defendant The City of Santa Cruz, calling an election for the purpose of submitting to the qualified electors of said defend-
548 ant city the question of issuing bonds to refund the outstanding indebtedness thereof, and ordinance No. 315, providing the form of notice to be given of such election and requiring the clerk of said city to publish the notice aforesaid, each showed upon its face that the alleged indebtedness to be refunded consisted in part of 89 bonds of the private corporation the City Water Company of Santa Cruz, which said bonds were of the value of $89,000.00 and which said bonds were neither valid nor existing indebtedness of the city of Santa Cruz, nor did they constitute or evidence any indebtedness of the city of Santa Cruz represented by bonds or warrants thereof; and that it was impossible for the electors of said city of Santa Cruz, or any elector of said city, at such election, so called, to vote in favor of refunding the indebtedness of the city of Santa Cruz evidenced by bonds or warrants thereof and against the refunding of indebtedness evidenced by the bonds of said private corporation the City Water Company of Santa Cruz.

That it appears from the findings of fact that no election was ever held in the city of Santa Cruz, nor by the electors thereof, for the purpose of determining the question of the refunding the outstanding indebtedness of the city of Santa Cruz evidenced by bonds or warrants thereof.

That it appears from said findings of fact that no election was ever held in the city of Santa Cruz, nor by the electors thereof, for the purpose of determining the question of refunding any indebtedness whatever.

That it appears in said findings of fact that said bonds were never issued by the defendant The City of Santa Cruz, but that,
549 on the sixteenth day of April, 1894, one William T. Jeter, pretending to act as mayor of said city, and J. Howard

Bailey, F. J. Hoffman, E. G. Greene and F. W. Lucas, pretending to act as the common council of said city, in violation of law, and without bids therefor having been received for the purchase of said bonds, and without authority of law, accepted a certain proposition of Coffin & Stanton to take said bonds, and all thereof, which proposition is dated February 27, 1894, and is set forth in finding of fact No. 10 herein.

That said proposition was illegal, and that said persons so pretending to act as mayor and common council of said city of Santa Cruz had no authority or right to accept said proposition.

That it further appears from said findings of fact that the said William T. Jeter, pretending to act as mayor of said city, and the said Lucas, Bailey, Hoffman and Greene, pretending to act as members of the common council thereof, without authority of law, and without any right or authority whatever in the premises, and in direct violation of the laws of the State of California, and particularly in violation of the provisions of the refunding act of 1893, under which it is alleged said bonds were issued, directed the clerk of said defendant city to deliver said refunding bonds and all thereof to Coffin & Stanton, without consideration and without any value whatever of any kind being received therefor; and that said bonds were, in accordance with such direction, delivered to Coffin & Stanton on April 24, 1894.

That it further appears from said findings of fact that said proposition of Coffin & Stanton above referred to and set forth in
550 finding No. 10 herein, was never in fact carried out by said Coffin & Stanton or by any one, and that the city of Santa Cruz received no consideration whatever for said bonds or for any of them.

That it appears affirmatively from said findings of fact that, except as against *bona fide* purchasers without notice, for a valuable consideration, said bonds were invalid and did not constitute valid or other obligations of the defendant; that the only allegation of the complaint herein in regard to the character of the plaintiffs as *bona fide* holders without notice was, that said bonds were delivered to one Walter Stanton, for value received, and that said Stanton, afterwards and before the maturity thereof, sold and delivered to the plaintiff herein certain of said bonds and certain coupons.

That there is no evidence of finding to sustain said allegations of said complaint, but that, both the findings and the evidence show that the same were untrue and that said bonds were not delivered, nor were any of them delivered, to said Stanton, nor was any value received therefor, and that said Stanton did not sell or deliver any of said bonds or coupons to the plaintiff.

That the only authority for the issuance or delivery of said bonds is that contained in the statutes of California; and that by the provisions of said statutes the condition precedent to the exercise of such authority was the existence of an outstanding indebtedness evidenced by bonds and warrants of the city or town, and that, when such valid indebtedness so evidenced did actually exist, said authority could only be exercised in strict pursuance of the pro-

visions of said statutes, especially the statute of March 1,
551 1893, including an election to be held for the purpose of refunding such indebtedness and such indebtedness only, and that, in such case, it was necessary, under the statute, that the notice of such election should recite such indebtedness and show the same to be a valid indebtedness of said city or town to the extent of which indebtedness only could refunding bonds be issued.

That the questions of the existence of such indebtedness and of the sufficiency of such notice of election and the recitals thereof were strictly jurisdictional and went to the foundation and essence of the power of the common council, board of trustees, or other governing body, to proceed under such statute, and such questions were not left to the determination of such common council, board of trustees or other governing body thereof, and that they could not give themselves jurisdiction by any determination or recital of that nature; and that, according to said statute, said refunding bonds could only be issued and disposed of in the manner specified in said statute, to wit, by being sold in the manner provided by such city council, or the governing body to the highest bidder for not less than their face value, and that, in such event, the proceedings of such sale must be placed in the treasury to the credit of the funding fund and applied only for the purpose of refunding the indebtedness for which they had been issued, and that under said statute, such proceedings, after the issuance of said bonds, to wit, the selling thereof and the placing of the proceeds, were also jurisdictional, and the fact that they had been had in accordance with law was not committed by the law to the determination and the decision of said officials of said city or town and could not be concluded
552 thereby; and that it appeared on the face of said bonds that they were issued for the purpose of refunding the bonded indebtedness of said city of Santa Cruz, issuing bonds therefor, and providing for the payment of the same, under the said statute approved March 1, 1893, and in pursuance of the ordinances of the city of Santa Cruz and of a vote of the electors of said city of Santa Cruz voting at an election called and held under said statute, and that therefore every purchaser of said bonds was affected with notice of said statute and all its conditions, requirements and limitations, and had notice of said ordinances and said notice of election, and that said statute had not been complied with, and that the debts ought to be refunded was not such an indebtedness as could be refunded under said statute, and that said election was not held according to law nor called according to law, and was put upon inquiry as to all the actual facts concerning the attempt to refund said indebtedness and make and issue said bonds; and that such inquiry, being pursued with ordinary diligence would necessarily have resulted in the ascertaining from record evidence and authentic documents and official documents of the facts showing the entire invalidity of said bonds, and all such purchasers were bound to know the terms of said statutes; and that there was no authority conferred by said statutes or by any law of California upon said municipality to issue negotiable bonds, or bonds negotiable in the sense of pre-

cluding an inquiry between the municipality and such purchasers into the actual facts concerning the validity of said bonds.

553 50.

Error of said court in making and finding conclusion of law No. 2 herein, to wit: "That E. G. & E. Wallace were *bona fide* purchasers of the bonds and coupons assigned by them to plaintiff without notice of the facts recited in the ordinances of the defendant numbered 314, 315 and 320, and without notice of any fact tending to impeach the truth of the recitals contained in said bonds," for the following reasons, to wit:

That said conclusion of law is not supported by the findings of fact herein, nor by any finding of fact herein.

That for the reasons, and each thereof, assigned and given in assignment of error No. 491 said E. G. & E. Wallace had full notice of all the facts tending to impeach the truth of the recitals contained in said bonds, and for the further reasons:

That in addition to the recitals on said bonds, the said E. G. & E. Wallace did not rely solely upon said recitals, and did not purchase said bonds on the faith of any representations, assertions or acts of the said city of Santa Cruz, but did in fact institute, and cause to be instituted by their agents and attorneys, an inquiry going back of and beyond the face of the bonds into their sufficiency and the regularity of the proceedings leading up to their issue, and particularly, in that respect, procured and obtained, before purchasing said bonds, the opinions of Z. N. Goldsby, Lafayette B. Gleason and F. M. Dickinson, Jr., attorneys mentioned in the findings herein from the face of which opinions said E. G. & E. Wallace were further informed that said attorneys had had and examined and

554 considered all the documentary and other evidence bearing upon the validity of said bonds and had been fully informed of all the facts showing the invalidity thereof, and had had full notice of the fact that said ordinance submitted a proposition to refund indebtedness which could not be refunded under the statute, and that the notice of election also showed that the indebtedness so refunded was such as the city had no power to refund under the statute, and that the election was not called or had according to law and the statute, and that the bonds were not sold or disposed of as required by law; and, having so sought and obtained such information, and relying upon the opinions of said attorneys and the result of their investigations, said E. G. & E. Wallace could not claim to be *bona fide* purchasers or to be entitled to any estoppel against the city arising on the face of the bonds, but, having made such investigation and inquiry, and having acted upon said opinions and reports of their agents and attorneys as aforesaid, they were bound by the result and all of the results of such an investigation and cannot escape the imputation of any knowledge resulting from a diligent and full investigation of the sources of inquiry open to them and to all the world on the face of authentic and recorded and official documents; and for the further reason that said E. G. & E. Wallace, as appears by the findings herein, were affected with actual

notice of all the facts showing the invalidity of said bonds by reason of such actual notice on the part of F. H. Prince & Company, their agents in the transaction.

51.

555 Error of said court in making and finding the general conclusion of law that the plaintiff is entitled to recover as against the defendant on all the bonds and coupons assigned to him excepting the three coupons assigned to him by the Northern Counties Investment Trust Company, Limited, a judgment in the sum of $22,950.00 and interest thereon from April 15, 1895, and costs of suit, for the reasons heretofore assigned in assignments Nos. 47, 48, 49 and 50 hereof.

52.

The defendant assigns for error herein that the court erred in rendering the judgment herein against the defendant upon its findings of fact herein in that, the facts found by the court do not sustain the judgment rendered by the court, and that, upon said findings, either a judgment should be rendered for the defendant, or a *venire de novo* should be ordered for insufficiency of the findings; and defendant specifies that it appears from said findings that the refunding bonds issued by the defendant, and of certain of which bonds and coupons attached thereto the plaintiff claims to be the owner and holder, were issued without authority of law and in disregard of the provisions of the statute under which they purport to have been issued, and were not valid obligations of the defendant in that it appears from said findings that the indebtedness to refund which said bonds were issued was not a valid indebtedness of the city of Santa Cruz evidenced by its bonds or warrants, but that the proposition submitted to the voters was as specified in the notice of election and in the ordinance of the city recited in the bonds, a proposition to refund not only certain bonds purporting to be the bonds of the city of Santa Cruz but also certain other bonds,

556 to the amount of $89,000.00, which were the bonds of a private corporation and not of the city of Santa Cruz, and that, of the remainder of said indebtedness proposed to be refunded, all but $39,000.00 thereof was not a valid indebtedness of the city of Santa Cruz, but consisted of bonds illegally issued by said city for improvement purposes, and issued after the repeal of the only law authorizing the issuance thereof, and that there is no finding of fact that E. G. & E. Wallace were *bona fide* purchasers of the bonds and coupons assigned by them to plaintiff without notice, and that the findings of fact show that none of the assignors of plaintiff were such *bona fide* purchasers without notice because the findings show that the recitals in said bonds and the face thereof, taken in connection with the statute of which all purchasers were affected with notice, showed the invalidity of said refunding issue, and that the same were not issued in pursuance of the statute of 1893, or to refund an indebtedness of the city of Santa Cruz, evidenced by bonds or warrants thereof, and showed that the provisions of the statute had been followed and complied with; and the notice of

election and ordinance recited in said bonds also showed that said bonds were issued in part for an indebtedness not that of the city of Santa Cruz or evidenced by its warrants or bonds, and that the election had not been properly held in pursuance of the statute

And said findings of fact show that said issue of $360,000.00 worth of bonds for refunding purposes was an overissue and beyond the authority and power of the city officials to make, in that the same, when issued, constituted an indebtedness greater than 15 per cent. of the assessed valuation of the real and
557 personal property of said city; and said findings of fact show that said bonds were not sold as required by the statute to the highest bidder or for not less than their face value in the character of money in which they were payable, and said findings show that said bonds were not executed or issued by legal or proper officials of said city in that the greater portion thereof were signed by one William T. Jeter after his term of office as mayor of said city had expired and at a time when he was neither *de facto* nor *de jure* mayor of said municipality.

And the said findings of fact further show that said refunding-bond issue was never issued by said defendant The City of Santa Cruz, but that the same was, by certain individuals pretending to act as members of the common council of said city, but who had no right or authority so to act, and who were, at the time, neither *de facto* nor *de jure* members of the common council of said city, unlawfully ordered to be delivered by the city clerk of said city to Coffin & Stanton under the terms of an illegal contract therefore accepted by said individuals pretending to act as such common council without authority, as aforesaid.

And that said findings further show that the city was not and could not be estopped from setting up, as against any purchasers of said bonds, the illegality and invalidity thereof, and that all the purchasers thereof were not purchasers in good faith and for value and without notice, but were affected with notice of the invalidity of said bonds in that the authorities of said city had no jurisdiction, power or authority to submit any proposition to the voters of said city for the refunding of anything but a legal indebtedness
558 of said city, and had no authority to issue said refunding bonds except for such legal indebtedness, and that such want of authority could not be concluded by any recitals in the bonds, and that all purchasers thereof, by the recitals in the bonds, were referred to the notice of election and to the ordinance recited in said bonds, and which were, and were required by law to be, matters of record in writing, and could easily have been ascertained upon the minutes and recorded proceedings of the city officials; and that the question whether such refunding bonds were issued to refund a valid indebtedness of the city was one not committed by law to the decision and determination of the city officials, but was a fact and condition precedent to the exercise of their power in the premises, and was a fact ascertainable by an inspection of said notice of election and of said ordinance, and of which all intending purchasers of said bonds were required to take notice at their peril.

That there is no finding of fact that said purchasers took said bonds in reliance of any of the recitals thereof or any representations made by the city officials, and, so far as E. G. & E. Wallace are concerned, the findings show that they did not so rely, but instituted an independent investigation of their own and employed attorneys and agents to investigate into the facts of the issuance of said bonds and into the proceedings taken by the city officials in issuing the same, and were informed by the opinions of their said attorneys of facts which rendered it their duty to pursue said investigations, and their said attorneys and agents, in the course of said investigation did have full and actual knowledge of the said notice of election and of the said ordinance recited in said
559 bonds and of all the other facts concerning the issuance thereof, and such knowledge of such agents and attorneys was and became the knowledge of all purchasers of said bonds.

And said findings further show that all purchasers of said bonds had notice that the statute under which the same purported to have been issued conferred no authority upon the city officials to issue negotiable bonds which would have the effect of putting off defenses against the city or of estopping the city or precluding the city from setting up, as against such purchasers, the actual facts concerning the validity of said bonds.

53.

The findings do not support the judgment in this: That said findings show that no election was ever held in the city of Santa Cruz, or by the electors thereof, for the purpose of determining the question of issuing bonds to refund the outstanding indebtedness of said city evidenced by bonds and warrants thereof, and that the findings further show that the bonds in question here were illegally issued, without the assent of two-thirds of the qualified electors of said city of Santa Cruz, or any number or portion of the qualified electors of said city of Santa Cruz, voting at an election held for that purpose, as required by section 18 of article XI of the constitution of the State of California.

54.

That the findings are insufficient to sustain the judgment in that the statute of the State of California approved March 1, 1893, required that the election should be called and held in the same manner as other elections are held in such city or town, and
560 that the notice of such election should recite the indebtedness to be refunded, together with the denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued; and the findings show that the bonds in question recited that they were issued under said statute and in pursuance of a special election called and held under said statute and in pursuance of an ordinance of the city of Santa Cruz calling said election and submitting said question of refunding to said electors, and that said notice of election and said ordinance were matters of public record required by law to be kept and open

to the inspection of all, and such ordinance and notice of election were and constituted notice to all intending purchasers of the invalidity of said bonds and of the fact that the city authorities in passing said ordinance and calling said election had proceeded without authority or jurisdiction, and that the indebtedness proposed to be refunded was not such indebtedness as said statute authorized to to be so refunded, and was not as indebtedness of the said city of Santa Cruz.

And said findings further show that no other recitals in said bonds could estop said city from setting up the facts aforesaid as against purchasers of said bonds, and that the decision of the question whether said indebtedness was the indebtedness of the city of Santa Cruz was not by law remitted to the determination of said city officials and could not be concluded by any recitals on said bonds.

55.

The findings are insufficient to support the judgment in that there is no finding of fact that E. G. & E. Wallace were *bona*
561 *fide* purchasers of said bonds or purchasers thereof without notice.

56.

The findings are insufficient to support the judgment in that the complaint alleges that the defendant, for value received, delivered the 360 bonds, with the coupons thereto attached, to one Walter Stanton who, afterwards and before the maturity thereof, sold and delivered to the plaintiff herein the nine bonds of the first series, numbered from 1 to 9, both inclusive, and 282 of the coupons maturing on April 15, 1895, which allegations of said complaint were denied by the answer, and there is no finding upon said issues, and no finding that said bonds were so delivered to Walter Stanton, or that Walter Stanton afterwards sold or delivered the same or any thereof to the plaintiff herein.

57.

The findings are insufficient to support the judgment in that there is no finding that the assignors of plaintiff were purchasers in good faith and for value, in that it is not found that such purchasers did not have notice of facts sufficient to put them upon inquiry as to the validity of said bonds, nor that such inquiry, if prosecuted with reasonable diligence, would not necessarily have resulted in the disclosure of the facts showing the invalidity of said bonds.

58.

The findings are insufficient to support the judgment in this: That the findings show that the attorneys whose opinions were submitted to E. G. & E. Wallace and F. H. Prince & Company
562 were the agents and attorneys of E. G. & E. Wallace, and that E. G. & E. Wallace, before purchasing said bonds, had actual notice that the said F. H. Prince & Company and the said

attorneys had and had examined the ordinances and other proceedings recited in said bonds and had actual knowledge of all the facts showing the invalidity of said refunding issue, and that the knowledge of said attorneys and of said agents was the knowledge of the said E. G. & E. Wallace.

59.

That the findings are insufficient to sustain the judgment for the reasons and in the particulars assigned and specified in assignments 47, 48, 49, 50 and 51.

60.

The findings do not support the judgment in that it appears from said findings that on March 13, 1894, the defendant had an outstanding bonded indebtedness of $271,000, which indebtedness had been incurred in the acquirement of public improvements by said city of Santa Cruz.

And the findings further show that the issuance of the refunding bonds in question created an indebtedness in excess of the limitation imposed by an act of the legislature of the State of California, approved March 11, 1891, which said act provides that no city, town, or municipal corporation shall incur an indebtedness for public improvements which shall in the aggregate exceed 15 per cent. of the assessed value of all the taxable real estate and personal property of such city, town or municipal corporation. (Statutes of 1891, page 84.)

563 61.

The findings are insufficient to support the judgment in this: that the findings show that apart from the question of estoppel by recitals and the rights of a *bona fide* purchaser for value before maturity, the bonds were invalid and constituted no obligations of the city on account of the failure to comply with the conditions upon which under the statute pursuant to which they purport to have been issued, such bonds could be issued, and no authority existed under the laws of California on the part of such municipalities as the defendant to issue negotiable bonds, and by the law of California the issuance of such bonds is not within the scope of the general and ordinary powers of the municipality, and such bonds can be legally issued only by express authority of the legislature. All who deal in such bonds are bound to know the authority under which and in pursuance of which they were issued, and are bound at their peril to know that the mode prescribed for the issuance of valid municipal bonds was in fact valid in the issuance of the bonds in which they are dealing, and they are not permitted to rely even upon the recitals contained in the bonds, and that want of authority in municipal officers cannot be supplied by their unauthorized acts or representations, and that, in this case, as the findings show, there was no authority to make this refunding issue, and the indebtedness proposed to be refunded was not a valid city indebtedness evidenced by its bonds or warrants, and the election was not legally held ac-

cording to statute, and the bonds were not sold and issued in the mode prescribed by the statute, no recitals in the bonds and
564 no decision or determination by the city officials could give validity to the issue or estop the city from setting up, even as against *bona fide* purchasers, the invalidity of the bonds, and, by the laws of California, every person dealing in such municipal bonds is bound at his peril to inquire whether they were issued in the mode prescribed, and, as the mode is the measure of the power, the bonds are void in the hands of a holder for value without actual notice; and by the law of California the officers authorized to issue these bonds upon the conditions prescribed in the statute were not the appointed tribunal to decide the fact which constitutes the condition, and, consequently, their recitals will not be accepted as a substitute for proof.

That by the law of the State of California, municipal bonds are assignable contracts merely and subject in the hands of holders to all the equities existing in favor of the municipality issuing such contracts; that there is no constitutional or statutory authority in the State of California conferred upon the officers of municipalities to make such recitals as those contained in these bonds; that those officials have given them by statute simply power to do certain acts and make those acts matters of public record as required by law; having done so, their functions with respect to them and their legal effect cease. They have no power to determine the result of any special election on the question of issuing bonds or contracting indebtedness. They were not authorized to bind the city of Santa Cruz by any statement which they might make concerning such election or concerning the result of such election, nor to determine whether such election was duly or legally called, or held, or conducted, nor to determine whether notice of such election was duly or legally given
565 or published as required by law, nor had they any power to certify or declare that all or any of the acts, conditions or things required by law to be done precedent to the issue of the bonds in question, or of any bonds, were properly done, or properly happened, or were properly performed in legal or due form as required by law. These recitals, being neither authorized by law nor matters within the power of determination of the city officials, the city is neither concluded nor estopped in any manner by such recitals.

Therefore, the said The City of Santa Cruz, plaintiff in error, prays that the judgment of the circuit court of the United States in and for the ninth circuit, northern district of California, be reversed, and that said circuit court be directed to grant a new trial herein.

Dated December 28, 1898.

LINDSAY & CASSIN,
JAMES G. MAGUIRE,
JOHN GARBER,
Attorneys for Plaintiff in Error,
Defendant in the Lower Court.

566 In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
THE CITY OF SANTA CRUZ (a Corporation), Defendant.

Order Allowing Writ of Error.

The City of Santa Cruz (a corporation), defendant in the above-entitled action, having filed in the circuit court of the United States in and for the ninth circuit, northern district of California, its petition for a writ of error from the judgment entered therein on the twenty-ninth day of September, 1898, pursuant to the decision of the court therein rendered, having filed its assignment of errors,

It is ordered, that said writ of error do issue in the form of law according to the statute in such case made and provided.

Dated December 28, 1898.

JOHN J. DE HAVEN, *Judge.*

567 In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff,
vs.
THE CITY OF SANTA CRUZ (a Corporation), Defendant.

Order Fixing Amount of Bond on Writ of Error.

At a stated term, to wit: the November term, A. D. 1898, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco on the twenty-eighth day of December, 1898.

Present: The Honorable J. J. De Haven, U. S. district judge, sitting as circuit judge.

On motion of Lindsay & Cassin and James G. Maguire, attorneys for defendant above named, it is ordered, that the bond for costs on writ of error taken by the defendant above named from the judgment rendered in the above-entitled action in favor of plaintiff in the circuit court of the United States in and for the northern district of California to the United States circuit court of appeals in and for the ninth circuit be, and the same is hereby fixed at the sum of five hundred dollars ($500).

Dated December 28, 1898.

JOHN J. DE HAVEN, *Judge.*

568 (Endorsed:) Petition for writ of error, assignment of errors, order allowing writ of error, and order fixing amount of bond. Filed December 28, 1898. Southard Hoffman, clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

ALBERT H. WAITE, Defendant,
vs.
THE CITY OF SANTA CRUZ (a Corporation), Plaintiff. } No. 12094.

Bond on Writ of Error.

Know all men by these presents, that we The City of Santa Cruz as principal, and Duncan McPherson and Michael Leonard as sureties, are held and firmly bound unto the above-named plaintiff, Albert H. Waite, in the full and just sum of five hundred dollars, to be paid to the said plaintiff, Albert H. Waite, his attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-ninth day of December in the year of our Lord one thousand eight hundred and ninety-one.

Whereas, lately at a session of the circuit court of the United
569 States, for the northern district of California, in a suit depending in said court, between Albert H. Waite, plaintiff, and The City of Santa Cruz, a corporation, defendant, judgment was rendered against the said defendant, and the said defendant, having obtained from said court a writ of error, to reverse the said judgment, in the aforesaid court, and a citation, directing to the said plaintiff, Albert H. Waite (defendant in error), is about to be issued citing and admonishing him to be and appear at a United States circuit court of appeals for the ninth circuit, to be holden at San Francisco, in the State of California, on the thirty-first day of December, next.

Now the condition of the above obligation is such, that if the said plaintiff in error, The City of Santa Cruz (defendant), shall prosecute its said writ of error to effect, and shall answer all damages and costs that shall be awarded against *them*, if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of the City of Santa Cruz.]

THE CITY OF SANTA CRUZ,
By WILLIAM H. LAMB, *Mayor.*

Attest: J. L. WRIGHT, *City Clerk.* [SEAL.]
DUNCAN McPHERSON. [SEAL.]
MICHAEL LEONARD. [SEAL.]

UNITED STATES OF AMERICA, }
Northern District of California, County of Santa Cruz, } ss:

Duncan McPherson and Michael Leonard being duly sworn, each for himself, deposes and says, that he is a householder in
570 said district, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

DUNCAN McPHERSON.
MICHAEL LEONARD.

Subscribed and sworn to before me this twenty-ninth day of December, A. D. 1898.

L. J. DAKE,
Notary Public in and for the County of Santa Cruz, State of California.
[SEAL.]

(Endorsed:) Form of bond and sufficiency of securities approved. Wm. W. Morrow, judge. Filed December 30, 1898. Southard Hoffman, clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

ALBERT H. WAITE, Plaintiff, }
vs. } No. 12094.
THE CITY OF SANTA CRUZ, Defendant. }

Clerk's Certificate to Record.

I, Southard Hoffman, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the
571 northern district of California, do hereby certify the foregoing pages, numbered from one to five hundred and seventy-two, inclusive, to be a full, true, and correct copy of the record and of the proceedings in the above and therein entitled cause (excepting therefrom the original complaint and demurrer thereto, which, by stipulation of counsel and order of court are omitted from this record), and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $349.10, and that said amount was paid by the defendant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, this thirty-first day of December, A. D. 1898.

SOUTHARD HOFFMAN,
[SEAL.] *Clerk United States Circuit Court, Ninth Judicial Circuit, Northern District of California.*

[Canceled 10-ct. internal-revenue stamp.]

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the ninth circuit, northern district of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The City of Santa Cruz (a corpo-
572 ration), plaintiff in error, and Albert H. Waite, defendant in error, a manifest error hath happened, to the great damage of the said The City of Santa Cruz (a corporation), plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the ninth circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the thirty-first day of December next, in the said circuit court of appeals to be then and there held, that, the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the thirtieth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

SOUTHARD HOFFMAN,

[SEAL.] *Clerk of the Circuit Court of the United States for the Ninth Circuit, Northern District of California.*

573 Allowed by—

JOHN J. DE HAVEN, *Judge.*

(Endorsed:) Original. No. 12094. Circuit court of the United States, ninth circuit, northern district of California. The City of Santa Cruz, plaintiff in error, *vs.* Albert H. Waite, defendant in error. Writ of error. Service of within writ and receipt of a copy thereof is hereby admitted this thirtieth day of December, 1898. Chickering, Thomas & Gregory, attorneys for Albert H. Waite, defendant in error and plaintiff in action in circuit court.

Answer of the Judges.

The answer of the judges of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States circuit court of appeals, for the ninth circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the court:

[SEAL.] SOUTHARD HOFFMAN, *Clerk.*

Filed December 30, 1898.

SOUTHARD HOFFMAN, *Clerk,*
By W. B. BEAIZLEY, *Deputy Clerk.*

574 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Albert H. Waite, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, for the ninth circuit, to be holden at the city of San Francisco, in the State of California, on the thirty-first day of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, ninth circuit, northern district of California, in a certain action numbered 12094, wherein The City of Santa Cruz (a corporation), is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John J. De Haven, United States district judge, ninth circuit, northern district of California, this thirtieth day of December, A. D. 1898.

JOHN J. DE HAVEN, *Judge.*

(Endorsed:) Original. No. 12094. Circuit court of the United States, ninth circuit, northern district of California. The City of Santa Cruz, plaintiff in error, *vs.* Albert H. Waite. Citation.
575 Service of within citation and receipt of a copy thereof is hereby admitted this thirtieth day of December, 1898. Chickering, Thomas & Gregory, attorneys for Albert H. Waite, defendant in error and plaintiff in action in circuit court. Filed December 30, 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

(Endorsed:) No. 505. In the United States circuit court of appeals for the ninth circuit. City of Santa Cruz, plaintiff in error, *vs.* Albert H. Waite, defendant in error. Transcript of record. In error to the circuit court of the United States for the northern district of California. Dated December 31, 1898. Frank D. Monckton, clerk, by Meredith Sawyer, deputy clerk.

576 At a stated term, to wit, the October term, A. D. 1898, of the United States circuit court of appeals, for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Thursday, the eighteenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

THE CITY OF SANTA CRUZ *vs.* ALBERT H. WAITE. } No. 505.

Order of Argument (U. S. C. C. A.).

On motion on behalf of Frank J. Sullivan, Esquire, ordered said Frank J. Sullivan, Esquire, — allowed to file brief as *amicus curiæ* herein within fifteen days from date. Further ordered cause argued by James G. Maguire, Esquire, for plaintiff in error, and continued to tomorrow for further argument.

At a stated term, to wit, the October term, A. D. 1898, of the United States circuit court of appeals, for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Friday, the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

577 THE CITY OF SANTA CRUZ *vs.* ALBERT H. WAITE. } No. 505.

Order of Submission (U. S. C. C. A.).

Ordered cause further argued by William Thomas, Esquire, counsel for defendant in error, and John Garber, Esquire, counsel for plaintiff in error, and submitted to the court for consideration and decision.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE CITY OF SANTA CRUZ, Plaintiff in Error,
vs.
ALBERT H. WAITE, Defendant in Error.

In error to the circuit court of the United States for the northern district of California.

Before Gilbert and Ross, circuit judges, and Hawley, district judge.

(*Opinion U. S. C. C. A.*)

Ross, circuit judge, delivered the opinion of the court:

The constitution of California provides for the classification of municipal corporations. The plaintiff in error, defendant
578 in the court below, is, and was at all the times mentioned in the record, a municipal corporation of the fifth class, organized and existing under and by virtue of a statute of the State of California, approved March 31, 1866 (Stat. 1866, p. 547), entitled "An act to incorporate the town of Santa Cruz," and an act supplemental thereto, approved March 11, 1876, entitled "An act to reincorporate the city of Santa Cruz." (Stat. 1876, p. 189.)

The present is an action at law to recover the amount alleged to be due on nine refunding bonds, and 282 interest coupons attached to the same, and to other refunding bonds, alleged to have been issued by the city of Santa Cruz on the 16th day of April, 1894, under and by virtue of an act of the State of California, approved March 1, 1893, and entitled "An act to amend an act entitled 'An act to authorize the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same,' approved March 15, 1883." (Stat. 1893, p. 59.) While the suit directly involves only the amount alleged to be due upon the bonds and coupons mentioned, it necessarily involves the validity of the entire issue under that act, consisting of 360 bonds, of one thousand dollars each, purporting to have been issued at the same time. It appears from the findings of the court below that on February 26, 1894, the city of Santa Cruz had an outstanding bonded indebtedness of $271,000.00 or thereabouts, and was also the owner of certain water works, and necessary appurtenances thereto, including
579 land, water rights, etc., theretofore purchased by it from the City Water Company of Santa Cruz, a private corporation. The water works and appurtenant property were subject to a mortgage which had been placed thereon by the City Water Company of Santa Cruz for the purpose of securing an outstanding bonded indebtedness of that corporation in the sum of $89,000.00, and interest thereon. On the said 26th day of February, 1894, the common council of the city, deeming it for the best interests of the city to refund its bonded indebtedness under the provisions of the act of

March 1, 1893, adopted an ordinance, which was fully approved by the mayor, providing for a special election to be held in the city of Santa Cruz on the 13th day of March, 1894, at which there should be submitted to its qualified electors the question of refunding the outstanding bonded indebtedness of the city. The indebtedness which it was thus proposed to refund was described in the ordinance as consisting not only of certain bonds of the city, amounting to the sum of $271,000.00, but also "eighty-nine (89) first-mortgage bonds (with interest thereon from November 1, 1893) of the corporation, the City Water Company of Santa Cruz, heretofore issued by said corporation, the City Water Company of Santa Cruz, which bonds bear date May 1, 1890, and are of the denomination of one thousand (1,000) dollars each, and bear interest at the rate of six (6) per cent. per annum, payable semi-annually, and are secured by a mortgage or deed of trust upon the property known as the city water works of Santa Cruz, executed by the City Water Company of Santa
580 Cruz, as party of the first part therein, to the Holland Trust Company of New York, as trustee, party of the second part therein; and which said bonds outstanding were, at the time of the conveyance by the City Water Company of Santa Cruz to the city of Santa Cruz of the property known as the city water works, and now are, a valid lien and charge upon the said property known as the city water works, and became thereby a part of the bonded indebtedness of the city of Santa Cruz"

More than two-thirds of the qualified electors of the city voted at the special election thus called in favor of the proposition to refund the then outstanding bonded indebtedness, as described in the ordinance, and thereafter, to wit, on March 26, 1894, the common council of the city passed, and its mayor approved, an ordinance for the purpose of carrying into effect the will of the electors as expressed at the election. This ordinance provided for the issuance of 360 interest-bearing bonds of the city, of the denomination of one thousand dollars each, and also directed that said bonds should be signed by the mayor and city clerk, and should contain the following recitals:

"This bond is one of a series of bonds of like date, tenor, and effect, issued by the said city of Santa Cruz for the purpose of refunding the bonded indebtedness of said city, and issuing bonds therefor, and providing for the payment of the same under and in pursuance of, and in conformity with, the provisions of an act of the legislature of the State of California, — 'An act to amend an act
581 entitled "An act authorizing the common council, board of trustees, or other governing body of any incorporated city or town, other than cities of the first class, to refund its indebtedness, issue bonds therefor, and provide for the payment of the same" (approved March 15, 1883), approved March 1, 1893.' And in pursuance of, and in conformity with, the constitution of the State of California, and the ordinances of the city of Santa Cruz, and in pursuance of, and in conformity with, a vote of more than two-thirds of all the qualified electors of said city of Santa Cruz, voting at a special election duly and legally called and held, and conducted in said city as

provided under said act, on Tuesday, the thirteenth day of March, 1894, notice thereof having been duly and legally given and published in the manner as required by law, and after the result of said election had been fully canvassed, found, and declared, in the manner and as required by law, and it is hereby certified and declared that all acts, conditions, and things required by law to be done precedent to and in the issue of said bonds, have been properly done, happened, and performed, in legal and due form, and as required by law."

The ordinance further directed that such bonds should, after public notice inviting bids therefor, be sold to the highest bidder for not less than their face value, in United States gold coin, to be paid on delivery at the city treasurer's office in the city of Santa Cruz. The bonds were offered for sale, but there were no bidders for them; and on April 16, 1894, the date to which the common council of the city had regularly adjourned, there were present Wm. T. Jeter, assuming to act as mayor, and J. Howard Bailey, F. J. Hoffman, E. G. Green, and F. W. Lucas, assuming to act as the common council of the city. At this meeting a proposition, theretofore made by the firm of Coffin & Stanton, to take all of the bonds, was accepted, upon condition that satisfactory security for its faithful performance by Coffin & Stanton be furnished. This proposition was dated February 27, 1894 (the day after the adoption of the ordinance calling the election), and was in substance one by which Coffin & Stanton were to purchase the refunding bonds at par value, less three per cent., without the payment of any money at the time of their delivery, or giving any other consideration therefor than their promise to take up the outstanding bonds which were to be refunded, and forward the same "from time to time to the city for cancellation."

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On April 23, 1894, the said Jeter, assuming to act as mayor, and the said Bailey, Hoffman, Green, and Lucas, assuming to act as the common council of the city, publicly met, pursuant to adjournment, and without protest from any one, accepted and approved a bond presented by Coffin & Stanton, for the faithful performance by them of the agreement contained in the proposition mentioned, and thereupon directed the city clerk of the city to deliver to that firm the entire issue of the refunding bonds referred to. The bonds were, in accordance with this direction, delivered to Walter Stanton, of the firm of Coffin & Stanton, on April 24, 1894, and thereafter Coffin & Stanton sold the same to various parties, from some of whom the plaintiff below, defendant in error here, claims title to the bonds and coupons sued on.

583

The plaintiff is only the nominal owner of these bonds and coupons, the same having been assigned to him for the purpose of collection only. Coffin & Stanton never complied, in whole or in part, with the agreement under which the bonds were delivered to them, and the city of Santa Cruz never received any benefit whatever from their sale, the entire proceeds thereof having been appropriated by Coffin & Stanton, who are insolvent.

The bonds are under the seal of the defendant city, contain the recitals set out, and are signed:

"WM. T. JETER,
Mayor of the City of Santa Cruz.

Attest: O. J. LINCOLN, *City Clerk.*"

They were so signed on the 16th day of April, 1894, on which day Jeter's successor to the office of mayor duly qualified.

The court below held, and rightly held, that the act of March 1, 1893, afforded no authority for the issuance by the city of Santa Cruz of any bonds for the purpose of refunding the indebtedness of the City Water Company, which was a private corporation. The court further held that as the bonds issued by the city under that act for that purpose were in no way segregated from others of the same issue, the plaintiff could only be permitted to recover by sustaining his contention that he was a *bona fide* purchaser without notice of this infirmity in the bonds, and as such was protected by the recitals contained therein. This contention the court below sustained, and accordingly gave judgment for the plaintiff.

584 The Federal courts have always protected with a firm hand the rights of *bona fide* creditors of municipal corporations, uniformly holding that the bonds issued by such corporations under granted power, negotiable in form, are valid in the hands of a *bona fide* holder, notwithstanding irregularities in their issue, or even in the non-performance of prior conditions, where the determination of the facts of such performance are by the law left to the determination of the municipal officers, and they incorporate in the bonds which are put upon the market proper recitals of such performance. The obvious reason for this is, that where the law under which such securities are authorized to be issued commits to the municipal representatives the determination of the conditions precedent, and those representatives recite upon the face of the bonds such performance, common honesty demands that the municipality be estopped to deny the truth of the recitals as against the *bona fide* purchaser of the bonds. But it is equally well settled that where the power to issue such bonds did not exist, or where the law under which they are issued requires certain facts to be made a matter of record, open to the inspection of every one, there can be no implication that it was intended to leave such facts to be determined by the officers charged with the duty of issuing the bonds and conclude by their recitals, contrary to the facts so recorded. (Sutliff *vs.* Lake County Commissioners, 147 U. S., 230; Dixon County *vs.* Field, 111 U. S., 83.)

585 It is, as a matter of course, not denied that every purchaser of a municipal bond is charged with notice of the law under and by virtue of which it is issued. In the present case that law is found in the statute of March 1, 1893 (Stat. 1893, p. 59), the first and second sections of which are as follows:

"SECTION 1. That whenever any incorporated city or town, other than cities of the first class, in this State, has an outstanding indebtedness, evidenced by bonds and warrants thereof, the common council, board of trustees, or other governing body thereof shall

have power to submit to the qualified electors of such city or town, at an election to be held for that purpose, the question of refunding such indebtedness. Said election shall be called and held in the same manner in which other elections are held in such city or town. The notice of such election shall recite the indebtedness to be refunded, together with the denomination, character, time of payment, rate of interest, as well as all other details of the bonds proposed to be issued. Such bonds shall be of the character known as 'serials,' one-fortieth of the principal being payable each year, together with interest due on all sums unpaid. Said bonds may be issued in denominations not to exceed one thousand dollars, nor less than one hundred dollars; principal and interest being payable in gold coin or lawful money of the United States, and either at the office of treasurer of such city or town, or at a designated bank situated in the cities of San Francisco, New York, Boston, or Chicago. Interest upon the same shall not exceed six per cent. per annum, and may be payable semi-annually. Said bonds shall *not*
be sold in the manner provided by such city council, or other
586 governing body, to the highest bidder, for not less than their
face value, in the same character of money in which they were payable. The proceeds of such sale shall be placed in the treasury to the credit of the funding fund, and shall be applied only for the purpose of refunding the indebtedness for which they have been issued. Said common council, or other governing body, shall, at the time of fixing the general tax levy for each year, and in the same manner for such tax levy provided, levy and collect annually, each year, sufficient money to pay one-fortieth part of the principal of such bonds, and also the annual interest upon the portion remaining unpaid.

"SECTION 2. Whenever sufficient money is in the funding fund, in the hands of the treasurer, to redeem one or more of the outstanding bonds proposed to be refunded, he shall publish once a week for two weeks in some newspaper of general circulation published in such city or town, if there be any, a notice to the effect that he is prepared to pay such bond or bonds (giving the number thereof), and if the same are not presented for redemption within thirty days after the first publication of such notice, the interest on such bonds will cease. He shall, at the same time, deposit in the post-office a copy of such notice, inclosed in a sealed envelope, with the postage paid thereon, addressed to the owner or owners of such bond or bonds, at the post-office address of such owner or owners, as shown by the record thereof kept in the treasurer's office. If such bond or bonds are not presented within the time specified in such notice, the interest thereon shall then cease, and the amount due be set aside for the payment of the same, whenever presented.

587 "All redemption of bonds shall be made according to the
priority in the order of their issuance, beginning at the first number. Whenever such outstanding bonds are surrendered and paid, the treasurer shall proceed to cancel the same by indorsing on the face thereof the amount for which they were received, the word

'canceled,' and the date of cancellation. He shall also keep a record of such bonds so redeemed, and shall make a report of the same to the common council, or other governing body of such city of town, at least once a month, accompanying the same therewith by the bonds which have been taken up and canceled."

It will be noticed that there is in this act no express grant of power on the part of the municipal authorities to issue any bonds. There is an implied power; but the implication is, not to issue bonds for any and all purposes, but refunding bonds with which to take up the outstanding bonds and warrants of the city, provided a majority of the qualified electors of the city should so vote, upon the submission of the question to them in the mode prescribed by the act. Whether the then outstanding indebtedness of the city should be refunded or not, was not left to the determination of the municipal authorities, but they were by the statute empowered to submit that question to a vote of the qualified electors of the city, specifying in the notice of election the indebtedness to be refunded, together with all details of the proposed issue. The power thus conferred on the mayor and council could only be exercised at a meeting of the municipal board. Such bodies can only act
588 by order, ordinance, or resolution, as every one is bound to know. (Wesson *vs.* Saline, 73 Fed. Rep., 919; 15 Am. & Eng. Ency. of Law, pp. 1028, 1029, 1030, and cases there cited.) In the present instance, the action of the mayor and council was by ordinance, as appears from the findings of the court below. Such ordinance was a part of the public records of the city, which by its charter are required to be kept "in large, well bound, uniform, and suitable books." (Stat. 1875–1876, p. 203.)

The indebtedness of the city, thus evidenced by its outstanding bonds and warrants, and proposed to be refunded by the issuance of other bonds, the act of March 1, 1893, authorized the mayor and common council of the city to specify, together with the details of the proposed issue, and submit the question of refunding the specified indebtedness, upon the designated terms, to the qualified electors of the city for determination. In the event the majority of the votes should be in favor of the proposition, then the municipal authorities were impliedly empowered to issue refunding bonds therefor, but for no other purpose. The public record which the act of March 1, 1893, taken and read, as it must be, in connection with the charter of the city, required to be made by order, ordinance, or resolution, disclosed to all the world the specific indebtedness that it was proposed by the municipal authorities to refund, and in respect to which the qualified electors of the city were called upon to vote. The officers impliedly charged with the issue of such refunding bonds were not in any manner authorized to make any certificate or representation to prospective purchasers
589 in respect to the character of the indebtedness evidenced by outstanding bonds or warrants of the city in lieu of which the refunding bonds were authorized to be issued. On the contrary, the statute itself was clear notice to every person that upon the records of the governing body of the city was required to be entered the spe-

cific indebtedness proposed to be refunded, together with the details of the proposed issue of refunding bonds, and that it was only for such specified indebtedness that any refunding bonds could be issued. To that record every purchaser was referred by the very act under which alone the bonds in suit were issued. The notice of election directed by this act to be prescribed by the mayor and common council of the city, occupies substantially the same position that the resolution did in the case of Lehman *vs.* City of San Diego, which was lately before this court, and is reported in 83 Fed. Rep., 669.

The present case is, we think, clearly within the doctrine of that case, and of Sutliff *vs.* Lake County Commissioners, *supra*, and Dixon County *vs.* Field, *supra*, and kindred cases, and must be ruled by them.

Entertaining these views, it is not necessary to decide any other point made and argued by counsel, except that as to the jurisdiction of the court. We have no doubt of the existence of jurisdiction.

In support of the point made on behalf of the plaintiff in error against it, it is argued that the action is substantially a proceeding in the nature of an application for a writ of mandamus to compel the officers of the city to perform the duty of levying and col-
590 lecting the necessary taxes for the payment of the bonds, which, without the issuance of such writ, and judgment in favor of the plaintiff, could not be enforced.

The action is one at law, upon certain bonds and coupons containing a promise on the part of the defendant to the suit "to pay to the bearer, for value received," so many dollars. The amount in controversy exceeds two thousand dollars, and the requisite diverse citizenship is alleged, and found to exist.

Conceding that, under the constitution and laws of California, the bonds and coupons sued on could only be paid out of the special fund provided for by the act under which they were issued, if the acts and bonds be valid—questions raised and contested in the suit—no presumption can be indulged that there are no moneys in the fund provided for. On the contrary, if the act be valid, the presumption is the other way, to wit, that the taxes provided for were levied by the officers charged with the duty of levying them, and that the moneys so raised were in the fund. It was not, therefore, as argued by counsel for the plaintiff in error, necessary that the complaint should show the levy of such taxes and the existence of moneys in the special fund. In such cases, where the plaintiff recovers, and there are no moneys in the fund out of which an execution issued upon the judgment can be satisfied, and this because of the refusal of the proper officers to levy the taxes, the Federal courts will issue a writ of mandamus in aid of its already-acquired juris-
diction. This is quite distinct from an original proceeding
591 for the issuance of a writ of mandamus, which it is well settled cannot be maintained in the Federal courts (Heine *vs.* Levee Commissioners, 19 Wall., 655; Bath County *vs.* Amy, 13 Wall., 244; Knox County *vs.* Aspinwall, 24 How., 376; Van Hoffman *vs.* City of Quincy, 4 Wall., 535; Riggs *vs.* Johnston County, 6 Wall., 166; Walkley *vs.* City of Muscatine, 6 Wall., 481; Commissioners

of Kearney County *vs.* McMaster, 68 Fed. Rep., 177; Keene Savings Bank *vs.* Lyon, 90 Fed. Rep., 523; Wilson *vs.* Knox County, 43 Fed. Rep., 481; Shepard *vs.* Tulare Irr. Dist., — Fed. Rep., p. —).

The judgment is reversed, and cause remanded to the court below, with directions to enter judgment for the defendant on the findings.

(Endorsed:) Opinion. Filed Dec. 4, 1899. F. D. Monckton, clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

CITY OF SANTA CRUZ, Plaintiff in Error,
vs.
ALBERT H. WAITE, Defendant in Error.

Dissenting Opinion (*U. S. C. C. A.*).

GILBERT, circuit judge, dissenting:

I am unable to agree with the majority of the court in holding that the city of Santa Cruz is not estopped to dispute the
592 validity of its bonds. The outstanding indebtedness which, under the authority of the act of March 1st, 1893, the city attempted to refund comprised a bonded indebtedness of the city amounting to $271,000.00, and a liability for $89,000.00 upon the first-mortgage bonds of the City Water Company of Santa Cruz which has been issued by that company before the purchase of its property by the city, and the payment of which had been assumed by the city. The power to refund the city's own bonded indebtedness was clearly within the letter and the spirit of the act. The $89,000.00 of the first-mortgage bonds of the water company, while it represented an outstanding indebtedness of the city for which it was liable and for the payment of which it might have borrowed money under proper proceedings therefor, and the refunding of which was within the spirit of the provisions of the act, was, nevertheless, not evidenced by the city's "bonds and warrants," and was therefore not within the letter of the law. To that extent the proposed application of funds which were to be realized upon the sale of the refunding bonds was illegal. The case presented is not a case where either by the constitution or by the statute of the State the city lacked the power to refund its indebtedness. The invalidity of the refunding bonds resulted from the proposed misapplication of a portion of the proceeds thereof. The underlying principles which are involved must not be permitted to become obscured by reason of the fact that the city of Santa Cruz was by its agents defrauded of the proceeds of the refunding bonds and never in fact received any portion thereof. The real
593 question is, whether a city, after procuring money on its bonds, which were issued for an unlawful purpose, but which the city certified were issued for a purpose which was lawful and for which statutory authority existed, can deny its obligation as

against an innocent purchaser. The case comes precisely within the principles announced in Hackett *vs.* Ottawa, 99 U. S., 86. In that case the city of Ottawa contended that its bonds were void, for the reason that they had been issued for a loan which was not for a municipal purpose, but for a donation to a private corporation in nowise connected with or under the control of the city. In that case, as in this, the ordinances of the city disclosed the purpose for which it was proposed to borrow money upon the city's credit. The court said: "The bonds in suit, by their recital of the titles of the ordinances under which they were issued, in effect, assured the purchaser that they were to be used for municipal purposes, with the previous sanction, duly given, of a majority of the legal voters of the city. If he would have been bound, under some circumstances, to take notice, at his peril, of the provisions of the ordinances, he was relieved from any responsibility or duty in that regard by reason of the representation, upon the face of the bonds, that the ordinances under which they were issued were ordinances 'providing for a loan for municipal purposes.' Such a representation by the constituted authorities of the city, under its corporate seal, would naturally avert suspicion of bad faith upon their part, and induce the purchaser to omit an examination of the ordinances them-
594 selves. It was, substantially, a declaration by the city, with the consent of a majority of its legal voters, that purchasers need not examine the ordinances, since their title indicated a loan for municipal purposes. The city is, therefore, estopped, by its own representations, to say, as against a *bona fide* holder of the bonds, that they were not issued or used for municipal or corporate purposes."

In the present case the opinion of the majority of the court seems to have been influenced by the fact that by the charter of the city of Santa Cruz a public record of its ordinances is required to be kept in books accessible to the public, and by the further fact that the city officers who were impliedly authorized to issue the refunding bonds were not expressly empowered to make any certificate or representation to prospective purchasers in respect to the character of the indebtedness for the payment of which the refunding bonds were issued. As far as the first consideration is concerned, it is sufficient to say that the charters of all municipal corporations require similar public records of their proceedings, and that such was undoubtedly the case with the city of Ottawa; yet in Hackett *vs.* Ottawa the court deemed that fact immaterial to the question which was before it, held that a purchaser of bonds was not bound to inspect such records, and disposed of the case upon the general principles of estoppel applicable to all cases. Neither can any distinction between that case and the case at bar be predicated upon the fact that the act of March 1st, 1893, under which the refunding bonds of the city of Santa Cruz were issued con-
ferred no express power upon the officers of the city to
595 certify to any particular fact in connection with the proceedings on which the bonds were issued, or to make any recitals whatever upon the bonds. The proceedings were had under

a statute that not not only conferred authority to refund the bonded indebtedness but imposed a duty upon the city to determine whether the occasion had arisen to refund, and, if so, to determine wherein the bonded indebtedness consisted, and the nature and amount thereof. Under this authority the city determined that the water company's bonds were a portion of its bonded debt, and as such subject to be refunded. The officers of the city of Santa Cruz who executed the refunding bonds were the officers whose duty it was to issue them. Before doing so they were obliged to determine for themselves that the antecedent steps had been taken which were indispensable to the issuance thereof, and they were empowered by an ordinance of the city to recite upon the bonds the facts usually recited upon such instruments—the facts upon which a purchaser was authorized to proceed and on which he might rely as was done in the Ottawa case. The bonds were executed under the seal of the city and were signed by the mayor and the city clerk. These were the officers whose duty it was to sign such instruments. Said the court in The Town of Coloma *vs.* Eaves, 92 U. S., 484, 488: "At some time or other, it is to be ascertained whether the directions of the act have been followed; whether there was any popular vote; or whether a majority of the legal voters present at the election did, in fact, vote in favor of the subscription. The duty of ascertaining was plainly intended to be vested somewhere,
596 and once for all; and the only persons spoken of who have any duties to perform respecting the election, and action consequent upon it, are the town clerk and the supervisor or other executive officer of the city or town. It is a fair presumption, therefore, that the legislature intended that those officers, or one of them at least, should determine whether the requirements of the act prior to a subscription to the stock of a railroad company had been met." The bonds in question in the present case contain the recital that they were issued "for the purpose of refunding the bonded indebtednsss of said city," in pursuance of the act of March 1, 1893, "and in pursuance of, and in conformity with, the constitution of the State of California, and the ordinances of the city of Santa Cruz, and in pursuance of, and in conformity with, a vote of more than two-thirds of all the qualified electors of said city," etc., and contained the certificate "that all acts, conditions, and things required by law to be done precedent to, and in the issue of said bonds, have been properly done, happened and performed, in legal and due form, and as required by law." Here is a distinct certificate that the bond was issued for the purpose of refunding the bonded indebtedness of the city. This recital was expressly authorized by an ordinance of the city before the bonds were issued. It was a representation of fact and not of law. In that respect the case stands upon a ground entirely distinct from that which controlled decision in the cases which are relied upon by the majority of the court to sustain their conclusion in this case, viz., Dixon County *vs.* Field, 111 U. S., 83, and Sutliff *vs.* Lake County Commis-
597 sioners, 147 U. S., 230. In those cases there was absence of statutory authority for the issuance of the bonds. In Dixon

County *vs.* Field, it was ruled that under the constitution of Nebraska there must be authority of law by statute of the legislature for every issue of bonds in aid of a railroad or other internal improvement. In the absence of such statute it was held that bonds were issued without warrant of law. The court said: "All parties are equally bound to know the law; and a certificate reciting the actual facts, and that thereby the bonds were conformable to the law, when, judicially speaking, they are not, will not make them so, nor can it work an estoppel upon the county to claim the protection of the law." In Sutliff *vs.* Lake County Commissioners it was held that where the constitution and the statute of a State forbid a county to issue bonds to an amount such as will make its indebtedness exceed a certain proportion of the assessed valuation of its taxable property, and the statute provides that semi-annual statements showing the total amount of the county's debt shall be published and entered upon the public records of the county, a purchaser of a bond issued in excess of the constitutional and statutory limit is charged with the duty of examining the record; and the county is not estopped, by a recital in the bond, that all the provisions of the statute have been complied with. In both cases the question was one of the preliminary authority to take the initial step toward the issuance of the bonds. The question of the existence of that authority was referable to the constitution and the statutes, and in the Sutliff case to a public record which the
598 statute expressly required and to which it directed attention.

The fact is not overlooked that incidentally in the opinion in Dixon County *vs.* Field, it was said that "where the validity of the bonds depends upon an estoppel, claimed to arise upon the recitals of the instrument, the question being as to the existence of power to issue them, it is necessary to establish that the officers executing the bonds had lawful authority to make the recitals and to make them conclusive." What was meant by this language of the court is indicated by the decisions which are cited to sustain it. It was not meant that before such recitals might bind the corporation the statute must first in words have defined the powers of municipal officers to decide preliminary questions and have recited the language of the representations which the bonds might obtain. It was meant that wherever it might be inferred from statutory authority that the officers whose duty it was to execute such instruments were to determine for themselves for their own guidance that the preliminary steps had been taken, or that the conditions of fact existed upon which they might proceed, and that they were to act thereupon, their recital of those facts should be conclusive. Thus, in Marcy *vs.* Town of Oswego, 92 U. S., 638, cited by the court in Dixon County *vs.* Field, it was said that "where it may be gathered from the legislative enactment that the officers or persons designated to execute the bonds were invested with power to decide whether the contingency had happened, or whether the fact existed which was a necessary precedent to any subscription or issue of the bonds, their decision is final in a suit by the
599 *bona fide* holder of the bonds against the municipality, and a recital in the bonds that the requirements of the legislative

act have been complied with, is conclusive." Of similar import are the remarks of Mr. Justice Bradley, speaking for the court in County of Warren *vs.* Marcy, 97 U. S., 104, and the decision of the court in Oregon *vs.* Jennings, 119 U. S., 74, 92, in which it was held that by virtue of the statutory authority to the supervisor and the clerk of the town to sign the bonds it was implied that they were the persons intrusted with the duty to decide, before issuing the bonds, whether the conditions determined at the election existed. The ruling in Hackett *vs.* Ottawa has not been modified by any subsequent decision of the Supreme Court. It was expressly approved in Ottawa *vs.* National Bank, 105 U. S., 342, where it was held that *the purchaser of bonds was relieved from the duty of taking* notice of the provisions of ordinances whose titles were recited in the bonds "by reason of the representation upon the face of the bonds that the ordinances provided for a loan for municipal purposes." It was impliedly approved in Sherman County *vs.* Simons, 109 U. S., 737, and in Evansville *vs.* Dennett, 161 U. S., 434. In the latter case the bonds contained the recital that they were issued by virtue of a certain designated act of the legislature "as well as by virtue of a resolution of the city council, ordering an election of the qualified voters of the city, which resulted in a legal majority in favor of such subscription." The court said: "As, therefore, the recitals in the bonds import compliance with the city's charter, purchasers for value having no notice of the non-performance
600 of the conditions precedent were not bound to go behind the statute conferring the power to subscribe, and to ascertain, by an examination of the ordinances and records of the city council, whether those conditions had, in fact, been performed. With such recitals before them they had the right to assume that the circumstances existed which authorized the city to exercise the authority given by the legislature." In the United States circuit courts of appeals the same doctrine has been applied. In Risley *vs.* Village of Howell, 64 Fed., 453, the question arose whether a *bona fide* purchaser of bonds was chargeable with notice and defeated in his right to recover by the fact that an ordinance referred to in the bond, and mentioned as an ordinance of a certain date, misappropriated the bonds to an unlawful use. The court held that inasmuch as the common council had authority to issue bonds of the nature of those which were involved in the suit, the defendant was estopped from setting up the fraudulent conduct of its own officials in misapplying the proceeds thereof. In City of Huron *vs.* Second Ward Sav. Bank, 86 Fed., 272, the bonds in the controversy recited that they were issued for the purpose of refunding the "bonds, warrants, or floating debt" of the city. It was held that the corporation was estopped from defending an action by an innocent purchaser on the ground that the warrants or bonds which they were issued to satisfy were void, or that the debt which they were issued to pay was fictitious. In City of South St. Paul *vs.* Lamprecht Bros. Co., 88 Fed., 449, it was held that the issuance of bonds containing the recital that they were "authorized by" a certain act of the
601 legislature estops a municipality from tendering proof that

they were issued in the construction of a bridge, a portion of which was outside the corporate limits.

In County of Jasper *vs.* Ballou, 103 U. S., 752, it was said: "There must be a time when the people in their political capacity are concluded by their contracts as much as individuals, and we think that where the people of a county, at an election held according to law, authorize their corporate or political representatives to treat certain outstanding county obligations as 'properly authorized by law' for the purpose of negotiating a settlement with the holders, and the settlement which was contemplated has been made, all contests as to the validity of the obligations must be considered as ended." In the case at bar the city of Santa Cruz by its ordinance adopted at the institution of the proceedings on which the bonds were issued, by the election notice which was issued and published by the vote of its citizens at such election and by the recitals which its bonds contained, declared that the outstanding obligation of the city, which was evidenced by the water bonds which it had assumed to pay, was a portion of the city's bonded indebtedness which it might refund under the act. Through all the transactions culminating in the delivery of the bonds it is clear that the officers of the city acted in the utmost good faith. There was no fraud, misrepresentation, or concealment. They honestly believed the refunding of the bonds of the water company to be within the purview of the statute, and if they had ever received the proceeds of the refunding bonds
602 they would doubtless have applied them to the discharge of that obligation.

I submit that the city is estopped to deny its liability, and that the judgment of the circuit court should be affirmed.

(Endorsed:) Dissenting opinion. Filed Dec. 4, 1899. F. D. Monckton, clerk.

United States Circuit Court of Appeals for the Ninth Circuit, October Term, 1899.

THE CITY OF SANTA CRUZ (a Corporation), Plaintiff in Error,
vs.
ALBERT H. WAITE, Defendant in Error. } No. 505.

Judgment (*U. S. C. C. A.*).

In error to the circuit court of the United States for the northern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in
603 this cause be, and the same is hereby, reversed with costs, and the cause is remanded to said circuit court, with directions to enter judgment for the defendant on the findings.

(Endorsed:) Judgment. Filed December 4, 1899. F. D. Monckton, clerk.

At a stated term, to wit, the October term, A. D. 1899, of the United States circuit court of appeals, for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Friday, the second day of March, in the year of our Lord one thousand nine hundred.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

THE CITY OF SANTA CRUZ
vs.
ALBERT H. WAITE. } No. 505.

Order Denying Petition for Rehearing, etc. (U. S. C. C. A.).

Ordered petition for a rehearing heretofore filed herein denied, and issuance of mandate herein stayed sixty days from date.

604 United States Circuit Court of Appeals for the Ninth Circuit.

THE CITY OF SANTA CRUZ (a Corporation), Plaintiff in Error,
vs.
ALBERT H. WAITE, Defendant in Error. } No. 505.

Certificate of Clerk C. A. A. to Transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing six hundred and three pages, numbered from 1 to 603, inclusive, to be a copy of the entire record of the above-entitled case in said United States circuit court of appeals for the ninth circuit, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 26th day of March, A. D. 1900.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

{ Ten-cent U. S. internal-revenue stamp, canceled M'ch 26, 1900. F. D. M. }

604½ [Endorsed:] File No., 17,712. U. S. C. C. of appeals, 9th circuit. Term No., 248. Albert H. Waite, petitioner, *vs.* The City of Santa Cruz. Filed April 11, 1900.

605 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The City of Santa Cruz is plaintiff in error and Albert H. Waite is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the northern district of California, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court
606 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23d day of April, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

607 [Endorsed:] Docketed. (No. 505, U. S. C. C. A.) Supreme Court of the United States. No. 598. October term, 1899. Albert H. Waite *vs.* The City of Santa Cruz. Writ of certiorari. Filed May 7, 1900. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

608 In the United States Circuit Court of Appeals for the Ninth Circuit.

A. H. WAITE, Petitioner & Plaintiff in Error,
vs.
CITY OF SANTA CRUZ, Respondent & Defendant in Error. } No. 505.

Stipulation as to Return to the Writ of Certiorari.

It is this 5th day of May, A. D. 1900, stipulated by and between the attorneys of record for the parties in the above-entitled cause that the certified transcript of the record of said cause heretofore submitted to the Supreme Court of the United States with the petition for a writ of certiorari, may be filed in the said Supreme Court and may be received and considered by that court as the transcript of the record in said cause, as though the same had been returned

by the clerk of the circuit court of appeals for the ninth circuit in obedience to the writ of certiorari granted April 23rd, 1900.

DILLON & HUBBARD AND
CHICKERING, THOMAS & GREGORY,
Attorneys for Petitioner & Plaintiff in Error.
JAMES G. MAGUIRE,
JOHN GARBER,
CARL E. LINDSAY,
Attorneys for Respondent and Defendant in Error.

(Endorsed:) Stipulation as to return to the writ of certiorari. Filed May 7, 1900. F. D. Monckton, clerk.

609 United States Circuit Court of Appeals for the Ninth Circuit.

THE CITY OF SANTA CRUZ (a Corporation), Plaintiff in Error,
v.
ALBERT H. WAITE, Defendant in Error. } No. 505.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the next preceding page to be a full, true, and correct copy of a stipulation as to return to writ of certiorari filed in the above-entitled cause on the 7th day of May, 1900, as the original thereof remains of record in my office.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 9th day of May, A. D. 1900.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

{ Ten-cent U. S. internal-revenue stamp, canceled May 9, 1900. F. D. M. }

610 & 611 United States Circuit Court of Appeals for the Ninth Circuit.

THE CITY OF SANTA CRUZ (a Corporation), Plaintiff in Error,
v.
ALBERT H. WAITE, Defendant in Error. } No. 505.

Return to Writ of Certiorari.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, in obedience to the foregoing writ of certiorari, issued out of the Supreme Court of the United States and addressed to the honorable judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the above-entitled cause, do hereby attach to the said writ a certified copy of a

stipulation entered into between the attorneys for the several parties in said cause on the 5th day of May, A. D. 1900, the original of which stipulation has been heretofore filed in this court, and do make the same my return to said writ.

In testimony whereof I have hereunto set my hand and affixed the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 9th day of May, A. D. 1900.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals
for the Ninth Circuit.

{Ten-cent U. S. internal-revenue stamp, canceled May 9, 1900. F. D. M.}

612 [Endorsed:] File No., 17,712. Supreme Court U. S., October term, 1900. Term No., 248. Albert H. Waite, petitioner, *vs.* The City of Santa Cruz. Writ of certiorari and return. Filed May 17, 1900.